USOOL SHAASHI



Translation Edited by:

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(May Allaah Protect Him)

INTRODUCTION TO
USUL UL-FIQH
ACCORDING TO THE HANAFI SCHOOL



An adapted elaboration on the
Usul ash-Shashi
of Imam Nidham al-Din ash-Shashi

by
Abdul Aleem



In the name of Allah, the Most Merciful, the Most Kind.

This humble work is an attempt to organise my own personal notes into a succinct, easy format. With this, its sole purpose is to be a reference for myself only, however it may be of possible benefit to others also.

As a layperson, I am greatly indebted to the scholars whom I have studied with, and I hope and pray that Allah places them all in the highest ranks of Jannah. Ameen.

All good within belongs to those from whom I have acquired my little knowledge, as willed by Allah. Any mistakes are to be attributed to myself, for my own shortcomings in understanding, and in subsequent research. I ask that you pray to Allah for my forgiveness, and for Him to grant me knowledge that is beneficial for me, to remove pride from my heart, and to forgive me, my family, and the believing community. Ameen.

Abdul Aleem
London, UK
15th Jumada al-Akhir 1435

Acknowledgments:

Mufti Tosir Miah – my teacher for this work, Shaykh Dr. Mohammad Akram Nadwi, Imam Nidham ad-Din ash-Shashi, Cordoba Academy.

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Contents

Discourse Two: The Sunnah

Discourse Three: *Ijma*

Discourse Four: *Qiyas*

The Legacy of Imam Abu Hanifah

Nu'man ibn Thabit ibn Zuta ibn Marzuban, also known as Imam Abu Ḥanifah (d. 150AH), was born during the reign of the Umayyad Caliph Abdul Malik ibn Marwan (reign. 65AH-86AH), when a few remaining Sahaabah (RA) were still alive. Although he was not to study or narrate any hadith from any of them, the majority of historians and *muhadditheen* agree that he had at least *seen* some of them – thus, 'technically' making him a part of the Tabi'in. As Daraqutni writes: *"Abu Hanifah saw Anas (ibn Malik) with his eye, but he did not hear (hadith) from him"* (as cited in Suyuti, *Tabyid*, 4).

Growing up in Kufah, Imam Abu Hanifah came from a financially stable family. However, upon recommendation by the great Tabi'i al-Sha'bi, he decided to leave his work/study balance, to focus firmly on his study of the religious sciences. Initially interested in the early-*kalaam* arguments that were a common sight, he left these debates to focus on specialising in the science of *fiqh* – embarking on mastering his knowledge of both hadith and *fiqh* with the most reputable of teachers in both fields.

He acquainted himself with the study of the available scholars in hadith and *fiqh* in Iraq, as well as travelling many times to Makkah and Madinah – the lowest number recorded being 15. It is said that his teachers in hadith alone numbered approximately 300, whilst he attached himself in *fiqh* mainly to his teacher Hammad ibn Sulayman (d. 120AH) for 18 years. His teacher had been the star student of Ibrahim an-Nakha'i (d. 96AH), and had inherited the leadership of the Kufan School. It is worthy to note here, that Ibrahim an-Nakha'i had also been the star student of 'Alqamah (d. 62AH), who in turn had been the star student of Abdullah ibn Mas'ud (RA) (d. 32AH). Upon the death of Imam Hammad, Imam Abu Hanifah took up the leadership of the Kufan School for himself. The *fiqh* of Kufah – from even before his time – was to be later attributed to his name, due to his stature.

From amongst the vast number of teachers that Imam Abu Hanifah had, these included: Hammad ibn Sulayman (d. 120AH), Amir al-Sha'bi (d. 104AH), Ata' ibn Abi Rabah (d. 115AH), Imam az-Zuhuri (d. 124AH), Amr ibn Dinar al-Makki (d. 126AH), Qatadah ibn Di'amah as-Sadusi al-Basri (d. 118AH), Abu Ishaq as-Sabi'i (d. 127AH), Sulayman ibn Mihran al-A'mash (d. 148AH), al-Hakam ibn Utaybah (d. 115AH), Salim ibn Abdullah ibn Umar (d. 106AH), Nafi' al-Madani Mawla ibn Umar (d. 117AH), Hisham ibn Urwah ibn az-Zubayr (d. 146AH), Sulayman ibn Yasar Mawla Umm al-Mu'mineen Maymunah (d. 110AH), Salamah ibn Kuhyal (d. 121AH), Mansur ibn al-Mu'tamir as-Sulami (d. 132AH), and Ikrimah Abu Abdillah (d. 107AH).

His reputation for analogy, critical thinking, and originality was established very early. However, coming from Kufah – the hotbed of polemical discussions – this often raised a few eyebrows regarding his stature. Despite this, upon meeting Imam Abu Hanifah, no contemporary would be left being able to critique his approach to *fiqh* as having being in error. There are many stories on how fellow

scholars of the day had their doubts regarding Imam Abu Hanifah, only for these apprehensions to be quashed upon realisation of the reality of his mode of thinking. (See *figure. 1*).

It has also been asserted by some critics that Imam Abu Hanifah (RH) was weak in hadith – with even a mention that he only knew seventeen hadith. This accusation is laughable – as even in the basic prayer, one would need the knowledge of at least 300 hadiths to pray properly. To know his knowledge of hadith, one must realise that Imam Abu Hanifah (RH) learned hadith from some of the most exceptional hadith scholars of his day. This includes five of the six scholars that are considered by Ali ibn al-Madini and others, as the 'six pillars of hadith' – through whom the majority of the chains of hadith went through. In contrast, Imam Malik (RH) who is respected for his contributions to hadith, only studied with one from these six. (See *figure. 2*).

The difference is that Imam Abu Hanifah (RH) did not teach hadith in the same manner that Imam Malik (RH) used to teach hadith, as his speciality was in *fiqh*. Further to this, when one quotes hadith when teaching *fiqh*, the purpose is not to prepare the narration of a hadith. Because of this, there may have been mistakes in those who wrote down these hadith from him. Further to this, how can it be possible for one to even give rulings on *fiqh*, without having understanding and knowledge of hadith?

An example of a criticism is that of Imam Abu Bakr ibn Abi Shaybah (d. 235AH), also from Kufah, who wrote a treatise in order to refute 125 places in which he believed that Imam Abu Hanifah had erred (and should have followed a hadith) - out of the 80,000 matters that he had talked about. From the 125 apparent places of error, later scholars say that 60 of them are places where Imam Abu Hanifah *does* follow a hadith – but those that Imam ibn Abi Shaybah does not, in 20 places - he preferred a Qur'anic ayah or a *mutawaatir* hadith. From the remaining, there are some that are mistaken attributions to Imam Abu Hanifah, and another 10 in which the hadith can be understood in more than one way. Thus, leaving a few 'possible' errors out of the 80,000 verdicts given – even if it were true. Saying this, there was no personal enmity, as Imam ibn Abi Shaybah's book itself contains 42 reports that include Imam Abu Hanifah amongst its narrators.

The later scholars in their biographical dictionaries affirmed the strength of Imam Abu Hanifah in hadith, with many of his students also becoming masters in the science of hadith. These students included: Abdullah ibn al-Mubarak (d. 181AH), Waki' ibn al-Jarrah (d. 197AH), Yahya ibn Sa'eed al-Qattan (d. 198AH), Yazid ibn Harun (d. 206AH), Hafs ibn Ghiyath al-Nakha'i (d. 196AH), Abu Asim al-Dahhak al-Nabil (d. 212AH), and Abd ar-Razzaq ibn Hammam ibn Nafi' (d. 211AH). (See *figure. 4*).

As for his *fiqh,* unlike what his critics understood of it as being too rational, this could not be further from the truth. His preference of the Qur'an not being allowed to be changed by an *ahad* hadith – rather reconciling between both if possible, nor for *ahad* hadith to be used for creedal issues, attest to this.

Furthermore, he never exercised *qiyas* where there existed proofs from either the Qur'an or Sunnah – in contrast to what his critics may have accused him of. In fact, where he did exercise *qiyas* – he made it a point to only exercise it matters that were not related to worship (*ibaadat*) in any way (such as *mu'amalaat*). In this regard, he only exercised *qiyas* over *ahad* hadith, where doing so served the benefit of both the individuals concerned, as well as the greater community. Further to this, in line with seeking the greater good for society, he also had a preference of reports by jurists – even preferring the *fatwas* of Umar (RA) and ibn Mas'ud (RA) as narrated by Ibrahim an-Nakha'i, over *ahad* hadith narrated by non-jurists.

It is for this reason that Imam Abu Hanifah is credited with developing *qiyas* into a well-ordered discipline within *fiqh* – with a clear excellence in its use of subtlety and refined analogy. He knew from both his experience in trade, as well as from the arising legal queries, for the need to develop a systematic approach to *fiqh*. He felt that the rise in conflicting verdicts based on single-reports (*ahad*), as well as a lack of understanding of the context of reports were being felt negatively in legal implications. He devoted himself to this cause, and made sure that his students also developed this same mind-set – allowing cases to be discussed and debated, with differences of opinion being allowed to be written down.

It is not certain if he had written any books himself, as nothing has reached us from him today with full certainty. However, there are many references and attribution to these in other works. As for his *fiqh,* all of it is compiled from the writings of his students. As already mentioned, he was a thinker, and he taught his students to learn and think without following him blindly – thus allowing for the development of a new generation of forward thinkers. He made it a point to make sure that his arguments and sources were known before his *fatwas* could be taken. It is for this reason that approximately thirty per-cent of Hanafi *fiqh* is taken from his two main students, Imam Abu Yusuf (d. 182AH) and Imam Muhammad ash-Shaybani (d. 189AH) – and this attests to the greatness of Imam Abu Hanifah as a teacher. These two star students also went on to influence other schools - see *figure. 3*. As well as these two students, the other star student was Zufad ibn al-Hudhayl ibn Qays (d. 158AH) – who himself went on to become an influential *qadi*.

From amongst the students of Imam Abu Hanifah, Imam Muhammad's writing was considered as being very eloquent. So much so, that Imam Shafi'i commented that the Qur'an has been revealed in his language – despite being Qurayshi himself. From amongst Imam Muhammad's writings, his six major books form the *Kutub Dhahir al-Riwayaat* collection, consisting of *Al-Mabsoot, Az-Ziyaadat*, *Al-Jami' As-Sagheer*, *Al-Jami' Al-Kabeer*, *As-Seeyar As-Sagheer*, and *Al-Seeyar Al-Kabir* – these form the foundations of Hanafi *fiqh*. The rare books are referred to as *Ar-Riwayah Kutub Nadir Ar-Riwayah*, and the opinions from the former collection are preferred over those found within the latter.

Imam Abu Hanifah spent his lifetime trying to understand the laws of the Qur'an and Sunnah for the betterment of the needs of society in line with the law of

Allah. As for his character, countless people have testified to his piety and fear of Allah – often spending full nights in worship from *isha* till *fajr* with the same *wudhu*. It is for his sincerity in taking on the burden of responsibility that people admired him – for which they titled him *Al-Imam Al-A'zam*, the greatest of those worthy to be followed. For all of his contributions, the *ummah* hold a great debt to him. May Allah be pleased with him. Ameen.

Figure 1: transmission of *fiqh* to Imam Abu Hanifah

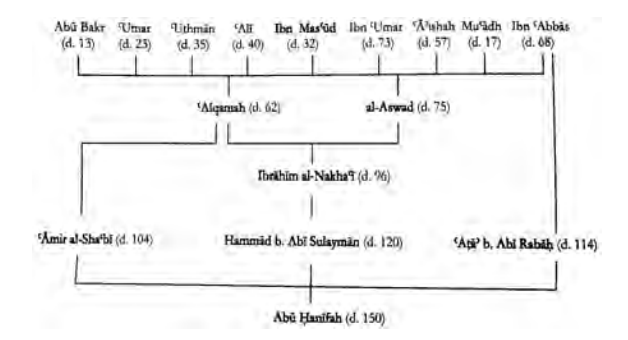


Figure 2: transmission of hadith to Imam Abu Hanifah

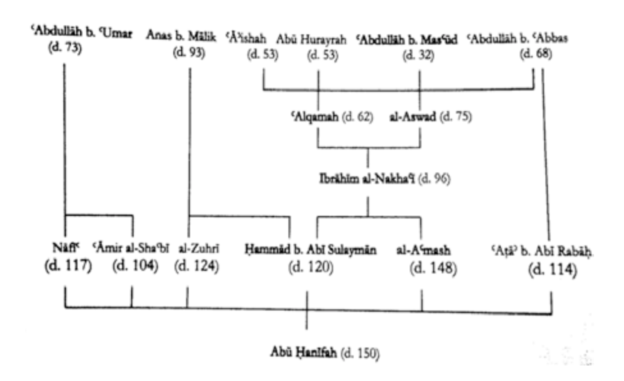


Figure 3: transmission of *fiqh* from Imam Abu Hanifah to other schools

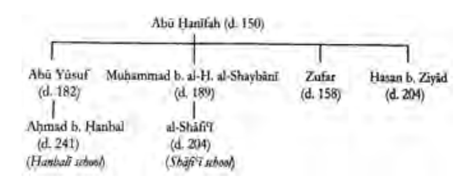
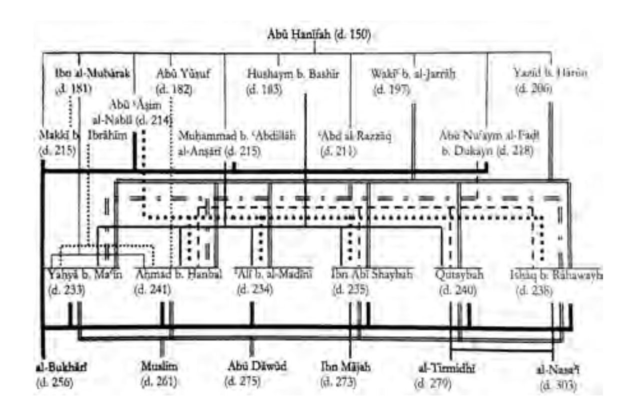


Figure 4: transmission of hadith from the students of Imam Abu Hanifah



Source for images and details: *Abu Hanifah, His Life, Legal Method & Legacy*, by Shaykh Mohammad Akram Nadwi, as well as studies with the author.

Usul ul-Fiqh according to the Hanafi School

The word *usul* is the plural of the word *asl* (meaning 'principle'). In this regard, the *usul* is a framework of principles formulised in order to understand the rulings derived from the *shari'ah* for our everyday lives. This is because of the fact that not all specific rulings have been given in the Qur'an, nor have all secondary rulings been given in the hadith collections. To address this, and the many other growing issues that arise within different chronological and cultural periods, this text – a basic rendering of *Usul al-Shashi* - attempts to formulate these principles according to the Hanafi School of the Ahlus Sunnah wal Jama'ah.

The original book, *Usul al-Shashi*, was authored by either Nidham al-Din ash-Shashi or Abu Ibrahim Ishaq ibn Ibrahim ash-Shashi, the exact author of which is not known. The word *Shashi* is one of *tashdeed*, meaning it is a denotation of the geographical location from which the author originates. This area of Shash is a region found in or around that of modern-day Uzbekistan.

The principles laid down in this book are only to be derived by the *mustambiteen* from amongst the *ulama*. These being individuals that have mastered the sciences through the correctness given to them by Allah, and derived from the following four sources:

1) **The Book of Allah** – The Qur'an.

2) **The Sunnah** – The teachings of the Prophet Muhammad (SAW).

3) ***Ijma*** – The consensus of the *ulama* on a particular matter. Although the *ijma* of the Sahaabah (RA) are considered absolute, those that are from a particular geographical local may differ from each other – and hence, open to scrutiny.

4) ***Qiyas*** – Logical deduction. This is not merely deducing according to one's whims, but in light of clauses that may be in place and in order to facilitate the best position in light of the law of Allah.

Each of these four principles needs to be researched properly, so that the procedure of deriving rules can be fully understood.

Discourse One:
The Book of Allah

Section One:
Khass (Specific) and *'Aam* (General)

***Khass*:** Something that is specific and has a restricted meaning – so that only a particular meaning can be understood from that particular word or phrase. For example:

- ***Takhsees ul-Fard*:** A specific individual (e.g. "Zayd").
- ***Takhsees un-Nauh*:** A specific type (e.g. "Man").
- ***Taskhsees ul-Jins*:** A specific specie (e.g. "Human).

***'Aam*:** This is the opposite of *khass*, and it gives a meaning of a grouping by either:

1) Bringing together a group of individuals through its word format (e.g. many Muslims will be identified as *"Muslimoona"*).
2) Implying a group of people through its meanings by using phrases that may not be plural in essence (such as, *"who"*, *"what"*).

Part One: *Khass* (Specific)

The ruling on a *khass* taken from the Qur'an is that it is compulsory (*wajib*) to act on it. If it is contradicted by a *khabar wahid* (note that Hanafis differentiate between *mashhoor* and *khabar wahid*).hadith or *qiyas*, the following will take place:

- If it is possible to reconcile and combine both without contradiction, one would have to act on both.
- If it is not possible to reconcile and combine both, one will act on the Qur'an and leave that which contradicts it – as the Qur'an is the highest source.

Example one:

An example of Qur'anic *khass* and its different understandings is from Surah Al-Baqarah (ayah 228), where Allah says, *"Divorced women remain in waiting for **three periods (quru)**"* in order to see out her *iddah* period before she can get married again.

Because the number three has been specified (*khass*), it must be acted upon. However, Imam Abu Hanifah and Imam Shafi'I both differ as to what the word *quru* means that follows it. Imam Shafi'I regards *quru* to refer to the cleanliness period, whereas Imam Abu Hanifah regards it to refer to the menstruation period.

The difference for this is because Imam Shafi'I has come to his conclusion based on a grammatical rule. The word *thalaatha* (three) is in the feminine form, which means that the noun following it has to be in the masculine form. In this regard, the word *tuhoor* (cleanliness) is the masculine equivalent of the word *quru*, and not for *haid* (menstruation). The Hanafis argue that if a *talaq* has been recommended to be given during a cleanliness period, the *iddah* period will only be equal two and a part period, and not fully satisfy the criteria of 'three'. If the *talaq* is given during a period of *haid*, the Hanafis wait until the next *haid* to count as the first menstruation period.

	Female divorced in	Iddah Period – Hanafi							
		1st part	2nd part	3rd part	4th part	5th part	6th part	7th part	
1	In *haid* (H=Haid)	H	1st T	H	2nd T	H	3rd T	H	Female exits iddah since the first haid was not complete
2	In her period of purity (T=Tuhr)	T	1st H	T	2nd H	T	3rd H	Female exits *iddah* since three complete periods of *haid* passed	

	Female divorced in	Iddah Period – Shafi							
		1st part	2nd part	3rd part	4th part	5th part	6th part	7th part	Notes
1	In *haid*	H See notes	1st T	H	2nd T	H	3rd T	Female exits *iddah*	According to Imam Shafi, a female divorced in her *haid* will not begin her *iddah* during the period of that *haid*
2	In her period of purity (*Tuhr*)	T	1st H	T	2nd H	T	(3 rd Haid) Female exits *iddah*	T	

Source: Mawlana Ahmed Fazel Ebrahim

The Malikis agree with the Shafi'is, considering *quru* to mean *tuhoor* – mentioning that the evidence of the third *haid* is only referring to its entry, and not completion. Imam Ahmad ibn Hanbal's early view is that it referred to *tuhoor*, but retracted it later to mean *haid*.

This ruling itself is one that is general, except for those that have been specified elsewhere in the Qur'an, such as pregnant women, those divorced before consummation, and women in menopause etc.

Example two:

The Hanafis and the Shafi'is differ over what is the minimum dowry or if there is any during a *nikah*. This is because the Hanafis act upon the Qur'anic ayah, *"..We certainly know what **We have made obligatory (faradnaa)** upon them concerning their wives and those their right hands possess, (but this is for you) in order that there will be upon you no discomfort.."* (Surah Al-Ahzaab, ayah 50). They believe take this ayah to mean that Allah is saying that a specific minimum dowry amount has been set, and therefore needs to be acted upon. However, because the ayah is *mujmal* (ambiguous and needing further clarification), the minimum is taken as ten *dirhams* (approximately £24) as mentioned in a hadith in the collection of Darqutni.

The Shafi'is however differ because Imam Shafi'i considered *nikah* to be a financial transaction (*mu'amalaat*), and therefore the dowry can be decided between the prospective couple in the same manner as any other financial transaction. In this regard, it can also be broken in any way they decided – so doing three *talaqs* in one sitting is allowed, even though others considered it disliked. To add to this, because it is an act of *mu'amalaat*, any form of *nafl ibaadah* is considered more worthwhile in Shafi'i *fiqh* than to engage in *nikah*.

Example three:

Another example in difference in relation to marriage is regarding the requirement of a *wali* during *nikah*. The Hanafis say that a woman can marry without her *wali*'s consent if she wanted to, because of the following ayahs, *"If he has divorced her, then she is not lawful to him until **she marries (tankiha)** another zawj.."* (Surah Al-Baqarah, ayah 230), and, *"..do not **prevent them from remarrying (yankihna)**.."* (Surah Al-Baqarah, ayah 232). In these cases, the act of *tankiha* and *yankihna* are connected specifically to the women and not conjoined with their guardian. There are many hadith that seem to contradict this, but in light of the rulings regarding contradictions – the *khass* of the Qur'an takes precedence.

From this, there is *ikhtilaf* as to whether the marital rights such as the dowry are required, and whether physical relations are allowed – these will naturally be dependent on the view of the person's school. However, although the Shafi'is would not require a *halala* to be necessary if the couple separated, some later Shafi'is have taken the opinion that it must be given.

Part Two: *'Aam* (General)

There are two categories of *'aam*:

1) Some part or portion has been made specific or extracted (*khass*).
2) The meaning is generic, and nothing has been made *khass*.

Examples of *'aam* without any *khass*

This category is dealt with in the exact same way as the *khass* – meaning it is an obligation to act upon it. Some examples:

1) In Surah Al-Ma'idah (ayah 38), Allah says, *"(As for) the thief, the male and the female, amputate their hands in recompense **for what they (bimaa)** committed as a deterrent (punishment) from Allah.."* The *maa* from the word *bimaa* is *'aam* – therefore it must be acted upon with no 'ifs' or 'buts'. According to Imam Abu Hanifah, if an item is stolen and then discarded, the cutting of the thief's hand is sufficient punishment, but no compensation is needed as the word *maa* is used. However, Imam Shafi'i compares this to the law of 'snatching', where it requires a compensation to be paid as penalty. Therefore, he says that if the item is no longer available when stolen, compensation must also be given.

2) Allah says, *"Recite **that (maa)** which is easy for you of the Qur'an"* (Surah Al-Muzzammil, ayah 20). The Hanafis say that this means one can read any part of the Qur'an that they know – no matter how little – and the *salaah* will be valid. However, there is a hadith that says that there is no *salaah* without the recitation of Surah Al-Fatihah, and therefore these are both reconciled to conclude that reciting any ayah is *fard*, but reciting Surah Al-Fatihah is *wajib* for the one that knows it.

3) Allah says, *"And do not eat **of that (mimmaa)** upon which the name of Allah has not been mentioned.."* (Surah Al-An'am, ayah 121). However, there are hadiths that seem to contradict this by mentioning that forgetfulness is acceptable, while another says that even intentional is okay as the slaughtering believer is a living acceptance of Allah. This could mean that it is *halal* whether left out intentionally or by accident, but the rule of the Qur'an is taken above both in this issue.

4) Allah says, *"Prohibited to you (for marriage)…your (milk) mothers **who (allati)** nursed you…"* (Surah An-Nisa, ayah 23). This ayah does not specify the exact amount of suckling required, and even though some hadiths do provide a minimum number of suckling – the Qur'anic rule of no specified amount of suckling is taken as the rule to decide on what constitutes a foster mother for the Hanafis.

'Aam where some parts have been taken out

An example of when an *'aam* has parts that have been made *khass* can be found with the word *muslimoon*. Although the word is *'aam*, you can still exclude people from this group. Similarly, 'Class 2' refers to a class of students and is therefore *'aam* – however, they can be specified and differentiated with sub-groupings such as 'beginner', 'intermediate' and 'higher' levels of learning.

The *hukm* for this is that the action is carried out with caution, so that those who are excluded will be immune, whilst it will remain *wajib* for those who remain within the 'general' (*'aam*) mass.

The first exclusion being made has to be by a scripture that is *mutawatir*. After that, if a further proof comes from a *khabar wahid* or through *qiyas* in order to further specify something that is already specified – it is permissible until the specified grouping is left with three remaining people. After this, it is no longer permissible.

Rule: If the lawmaker (Allah or the Prophet (SAW)) extracts something from a general text in a manner that is unclear – there is now a possibility that every single individual remaining within the command of the *'aam* may enter what is *khass*, as both sides (*'aam* and *khass*) remain equal regarding an individual due to it not being clear. However, when a *shar'i daleel* is found to establish what that *khass* is, the option of the *khass* will be given preference.

Example:

In the Qur'an, Allah mentions that He has made *bay'* (dealings – *'aam*) lawful whilst *riba* is excluded from this (by *khass*) - *"..But Allah has permitted **bay'** and has forbidden **riba**.."* (Surah Al-Baraqah, ayah 275). However, the word *riba* literally means 'to increase', and therefore this creates confusion as to what kind of dealing is allowed if no increase is allowed? In this instance, the use of the word *riba* is *majhool* (we do not know what it is) – and therefore there is now a doubt in every single transaction as both the words *bay'* and *riba* (in its literal sense) will lead to 'increase'.

This problem is however solved when a *shari'i daleel* is found within a *khabar wahid* hadith; thus explaining exactly what *riba* is and the six categories in which it is found. From this *daleel*, we learn that *riba* is not an increase through honest profit but when one of two parties on an equal footing receives an excessive increase in comparison to the other.

Rule: If the lawmaker excluded portions from the *'aam* clearly, then it is possible that the *khass* is found with a condition or clause. When a *daleel* comes to find this clause in a person, then the *khass* will be preferred - but with caution.

Example:

In the Qur'an, Allah says, *"..kill the mushrikeen ('aam) wherever you find them.."* (Surah Al-Tawbah, ayah 5). Even though this ayah is *'aam*, Allah specifies it in the next ayah, *"..And if any one of the mushrikeen seeks your protection, then grant him protection so that he may hear the words of Allah . Then deliver him to his place of safety.."* (Surah Al-Tawbah, ayah 6).

This initial specification is allowed since it has been made by a *mutawatir* source – the Qur'an. Furthermore, because it is connected to a condition (*ma'lool*) that anyone who is not fighting with you should be placed in safety – by *qiyas*, we analogise that everyone else who would not be fighting should also not be harmed (such as women, children, and the elderly). However, this is done with caution, as if any of these people were to be found engaging in warfare – they can be killed.

Section Two:
Mutlaq (Non-conditional) and *Muqayyad* (Conditional)

Mutlaq: Something that is unattached with no conditions attached to it.

***Muqayyad*:** Something that has a condition(s), and is therefore restricted.

The ruling for both the *mutlaq* and the *muqayyad* according to the Hanafis is that they both remain as they are, and do not change. The Hanafis also state that where there is a *mutlaq* ayah in the Qur'an, if it is possible to act on its general nature – then it is not permissible to restrict it and make it *muqayyad* through the use of a *khabar wahid* or *qiyas* (although *mashhoor* hadith may do so i.e. with wiping over socks – note that Hanafis differentiate between *mashhoor* and *khabar wahid*).

Part One: *Mutlaq* (Non-conditional)

Example one:

In the Qur'an, Allah says, *"O you who have believed, when you rise to (perform) prayer,* ***wash your faces and your forearms to the elbows and wipe over your heads and wash your feet to the ankles**..."* (Surah Al-Ma'idah, ayah 6). This is a simple straight-forward instruction commanding those that want to pray, to purify the limbs as instructed – and not restricted in any way. The Hanafis say that it is not allowed to restrict this by adding other elements to it as obligations (such as an 'intention', as mentioned by the Shafi'is), as this will alter the meaning of the Qur'an. Due to this, those that are clearly mentioned will be *fard* whilst everything else will be a *sunnah* - with a hierarchy of priority given depending on the strength of the source that it is derived from.

Example two:

In the Qur'an, Allah says, *"The (unmarried) woman or (unmarried) man found guilty of sexual intercourse -* ***lash each one of them with a hundred lashes**..."* (Surah An-Noor, ayah 2). This is a clear indication of what the stipulated punishment is for the one who is convicted of *zina* either through confession or witnessing. However, there is a *khabar wahid* which adds an additional 'exile' onto the punishment for a year in order to protect society. Imam Shafi'i acts on this ruling, however the Hanafis say that this is adding an 'increase' to a clear stipulation in the Qur'an, and therefore changing the *mutlaq* form of the Qur'an. Because of this, the Hanafis say that the lashing is ordained, and the exile will be in effect dependant on a case-by-case verdict by a local *Qadi*.

Example three:

In Surah Al-Hajj, Allah says, *"Then let them end their untidiness and fulfill their vows and* ***perform Tawaaf around the ancient House****"* (ayah 29). Here, Allah in a straight-forward (*mutlaq*) instruction stipulates the need for *tawaaf* as it is during the ritual of *hajj*. However, there is a *khabar wahid* which adds a condition of the need to have *wudhu* during the *tawaaf*. Therefore, the two are reconciled by the Hanafis to say that the *tawaaf* is *fard*, whilst the need to have *wudhu* during it is *wajib*. To then perform it without *wudhu* would be a deficiency, and would require a *damm* – and therefore an animal needs to be sacrificed in order to rectify it.

Example four:

In the Qur'an, Allah says, *"And establish prayer and give zakaah and* ***bow with those who bow****"* (Surah Al-Baqarah, ayah 43). This ayah is *mutlaq*, however, the hadith collections also add that the actions in *salaah* should also be done in a beautiful manner. Therefore, the Hanafis say that these additions are considered *wajib*, so as to not change the stipulation in the Qur'an.

Part Two: *Muqayyad* (Conditional)

Example:

The act of *dhihar* is when one alludes his wife as being similar to his mother or sister in a manner that is *haram* to him (e.g. *"You are to me like my mother's back"*). If this is done, a *kaffarah* needs to be paid in order for him to be allowed to have relations with his wife again. This *kaffarah* is stated in the Qur'an with various options depending on the financial status of the person:

"And those who pronounce dhihar from their wives and then (wish to) go back on what they said - then (there must be) the ***freeing of a slave before they touch one another****. That is what you are admonished thereby; and Allah is Acquainted with what you do. And he who does not find (a slave) - then a* ***fast for two months consecutively before they touch one another****; and he who is unable - then the* ***feeding of sixty poor persons****. That is for you to believe (completely) in Allah and His Messenger; and those are the limits (set by) Allah. And for the disbelievers is a painful punishment"* (Surah Al-Mujadila, ayah 3-4).

In these two ayahs, one can see that the first two forms of expiation (freeing a slave and fasting sixty days) comes with a condition (*muqayyad*) that it must happen before the person can touch his wife. However, the third (feeding sixty poor people) does not have this condition (*muqayyad*) and therefore the Hanafis act on the *mutlaq*, and say that the person can resume marital relations whilst he is in the process of still feeding the poor. The Shafi'is disagree and use *qiyas* to analogise that the third expiation still requires the same condition (*muqayyad*).

Further to this, all mentions of expiation for sins of *dhihar* and 'breaking of oaths' in the Qur'an are *mutlaq* – and therefore, the freed slave does not need to be Muslim. The Shafi'is however use *qiyas* to compare this to the expiation of the act of manslaughter, and specify it with the condition (*muqayyad*) that the slave also has to be Muslim. Although the Hanafis agree that the expiation for manslaughter is *muqayyad*, they say that it remains for that particular ruling only.

Contentious issues raised by the Shafi'is, and the Hanafi responses

Issue one:

The Hanafis say that it is permissible to make *wudhu* with 'saffron water' and every other type of water where something pure has been mixed with it (and one of the three conditions – taste, smell, colour - of the water changes). The reason for this being that 'saffron water' (*maa az-zaffran*) does not take anything away from water, but instead it further establishes the fact that it is water – as the word *maa az-zaffran* still alludes to it being water through its wording. Therefore, the need for *tayammum* is not established if 'saffron water' is available to the person in the following ayah; *"..But if you are ill or on a journey or one of you comes from the place of relieving himself or you have contacted women* ***and do not find water, then seek clean earth and wipe over your faces and hands with it****.."* (Surah Al-Mai'dah, ayah 6). This is based on the principle that 'saffron water' is still water and therefore not changing the *mutlaq*.

The Shafi'is criticise the Hanafis by saying that although they (Hanafis) say the *mutlaq* and *muqayyad* remain as they are – they (Hanafis) are in fact making the *mutlaq* (water) into *muqayyad* by allowing 'saffron water'. The Hanafis however claim that they are misunderstanding the fact that the *maa az-zaffran* (saffron water) is still *mutlaq*. Because of this, any other type of water that is similar to 'saffron water' can also be used for *wudhu* and *ghusl*, but the reason why water with *najasa* is not included using the same reasoning is because these *najasa* elements have been specified and excluded elsewhere.

The Hanafis also respond by accusing the Shafi'is in turn of making a *mutlaq* into a *muqayyad* by specifying the *maa'* (water) in this ayah as being only from the sky when this is not mentioned.

Issue two:

In the Qur'an, Allah says, *"O you who have believed, when you rise to (perform) prayer, wash your faces and your forearms to the elbows and* ***wipe over your heads*** *and wash your feet to the ankles.."* (Surah Al-Ma'idah, ayah 6). This is a simple straight-forward instruction commanding those that want to pray to wipe a part of their head without specifying which part or how much of the head needs to be wiped. Therefore, the Shafi'is ask the Hanafis why they have made it *fard* to wipe a 'quarter of the head', and specified it?

The Hanafis respond by saying that the Shafi'is have misunderstood this issue, as the Qur'an is not *mutlaq* regarding the issue of *masa* (wiping). The reason is that a *mutlaq* is completed as long as the command is completed regardless of the manner in which it is done. However, this ayah is not *mutlaq*, as it is ambiguous (*mujmal*) – and therefore further details need to brought forward in order to understand it fully so that the person knows what exactly needs to be wiped.

Issue three:

When a husband gives his wife three *talaqs*, she can only return to him if she has been married to, consummated, and then divorced someone in between (*halala*). The Shafi'is object to this by saying that the Qur'an is *mutlaq* in its address (*hatta tankiha*) in the following ayah, *"If he has divorced her, then she is not lawful to him* ***until she tankiha zawj after him****.."* (Surah Al-Baqarah, ayah 230). Therefore, the Shafi'is ask the Hanafis regarding why they have specified it (*muqayyad*) by saying that consummation will need to take place with the second husband, when it is clearly *mutlaq*.

Some Hanafis respond by saying that the answer itself is implied within the wording of the ayah itself. They say that this is because the word *tankiha* can also come in the meaning of intercourse (*wathy*), and if you took the word *zawj* to mean someone who they are yet to marry – it does not make sense, as a *zawj* is someone to whom they have already been married. Therefore, the word *tankiha* (*nakaha*) is taken to mean intercourse.

Another response by the Hanafis, is to present a supporting hadith from Sahih Muslim (Book of Marriage, no. 3354). It is accepted for *muqayyad*, since it is *mashhoor* (note that Hanafis differentiate between *mashhoor* and *khabar wahid*):

A'isha (RA) reported: *"There came the wife of Rifa'a to Allah's Prophet (SAW) and said: 'I was married to Rifa'a but he divorced me, making may divorce irrevocable. Afterwards I married Abd al-Rahman b. al-Zubair, but all he possesses is like the fringe of a garment (i. e. he is sexually weak)'. Thereupon Allah's Messenger (SAW) smiled, and said: 'Do you wish to return to Rifa'a. (You) cannot (do it) until you have tasted his sweetness and he ('Abd al-Rahman) has tasted your sweetness'. Abu Bakr (RA) was at that time near him (the Prophet) and Khalid (b. Sa'id) was at the door waiting for the permission to be granted to him to enter), He (Khalid) said; 'Abu Bakr, do you hear what she is saying loudly in the presence of Allah's Messenger (SAW)?'"*

Here, Shaykh Akram Nadwi comments that the Hanafi reason for consummation has no basis in the linguistic structure mentioned, but only because of the above hadith. Thus, *tankiha* means '*nikah*' and not 'intercourse', as it is also used to mean *nikah* in the Hanafi understanding of a woman not needing a *mahram* to get married. He adds, that to say that one 'cannot perform *nikah* with a *zawj*' is incorrect, as sometimes in the Arabic language, the future state is mentioned in a present tense – this is called *i'tibar mayaqoon*.

Shaykh Akram Nadwi further adds, that when a *mutlaq* word has been specified (*muqayyad*) through making a *mushtarak* word (has many meanings) into a *muawwal* (a meaning is selected), the same meaning needs to be understood in every case – and not a different meaning on a case-by-case basis. However, people may differ on the initial *muawwal* specification of a *mushtarak* word, such as the differences in the meaning of *tuhur* between the Hanafis and the Shafi'is.

Section Three:
Mushtarak (Many meanings) and *Mu'awwal* (Selected meaning)

Mushtarak: The word *mushtarak* comes from the word *ishtarak*, meaning 'to combine' or 'to join' (i.e. *shirk* is to join partners with Allah), and refers to a word which has more than one meaning in the Arabic language. An example of this is the word *jaariya*, which can either mean *ama* (slave girl) or *safeenah* (boat).

The *hukm* of *mushtarak* is that is that when one of the words have been selected (*mu'awwal*), the rest of the words will be dropped and we have to act on the selected word and cannot act on two of the varying meanings.

***Mu'awaal*:** The *mu'awwal* word is the word that has been preferred and selected within a *mushtarak* word (with more than one meaning).

Part One: *Mushtarak* (Many meanings)

Example one:

As taken from Imam Abu Hanifah and Imam Muhammad; if 'Person X' left a will for *Bani Fulaan* to receive a *mawaali* – it can either refer to two things. It can either be a reference to *a'la* (slaves who have freed him) or *aswal* (slaves whom he has freed) – and therefore because no indication is made, none will receive anything from the will.

Example two:

Imam Abu Hanifah mentioned; if someone were to say to his wife, *"You to me are like my wife"* – this is not an act of *dhihar*. This is because it is not clear as to whether he means it as an act of praise or not, and therefore the preference cannot be given to it being a *thahir* act. Due to this, he will have to be asked regarding his intention when he made that particular statement, and a decision will then be made based on that intention.

Example three:

In the Qur'an, Allah says, *"O you who have believed, do not kill game while you are in the state of ihram. And **whoever of you kills it intentionally - the penalty is an equivalent (mithl) from sacrificial animals to what he killed**.."* (Surah Al-Ma'idah, ayah 95). However, this is not easily understood as the word *mithl* is one that is *mushtarak*, and can either mean giving:

1) An animal of equivalent size etc.
2) Money equivalent to the value of the animal.

The scholars say that the monetary equivalent is what is meant, and therefore the former is automatically dropped, as both meanings cannot be taken at the same time.

Part Two: *Mu'awwal* (Selected meaning)

If a preference is given to a *mushtarak* word after using all of the possible methods of juristic exertion, it is called a *mu'awwal*. Of course, this understanding is not one that is through wahy (divine inspiration), but instead, one that is through one's own understanding through *ijtihad*.

The *hukm* of *mu'awwal* is that where one of the meanings has been taken – we act on it, with the knowledge that there is a possibility that it may be wrong. If however, the person that has said it then clarifies the *mushtarak* word – it becomes a *mufassar* sentence, and therefore must be acted upon based on that meaning only.

Example one:

If a transaction in trade (*bay'*) takes place in which one agrees $10 for the service – this currency ($) will be understood in relation to the currency that is prevalent in the area in which the trade took place. For example, if the transaction took place in Australia, the $10 will be understood as 'Ten Australian Dollars' as opposed to dollars from any other country. This is *mu'awwal* as the $10 could literally be understood as a generic title given to currencies in other parts of the world – but has been specifically selected based on geographical location. If however, the transaction took place in an area in which one is unsure of which 'dollar' is prevalent – the transaction will become invalid as no meaning can be preferred over another in this case.

Despite all of this, if the '$10 transaction' in Australia is then clarified by the trader as being 'Ten Canadian Dollars' – it becomes a *mufassar* sentence, and will need to be understood in light of this clarification.

Example two:

Tankiha has been taken to mean *wathy* (intercourse) for *halala*, whilst taken to mean *nikah* for the issue of 'requirement of a *wali*'. This is because a *mu'awwal* can be selected to suit different issues with different meanings – but not two meanings for the same issue.

However, Shaykh Akram Nadwi would disagree with this. He says that when a *mushtarak* word has been specified into a *muawwal*, the same meaning needs to be understood in every case – and not a different meaning on a case-by-case basis. However, people may differ on the initial *muawwal* specification of a *mushtarak* word, such as the differences in the meaning of *tuhur* between the Hanafis and the Shafi'is.

Section Four:
Haqiqat (Literal) and *Majaaz* (Metaphoric)

***Haqiqat*:** The literal meaning - every word in which the meaning is the binary opposite of something else.

***Majaaz*:** The metaphorical meaning - where a word is used in a way other than what it had been created for, yet it has taken on another meaning to imply something else.

For any particular instance, both the *haqiqi* and *majaaz* meanings cannot be meant at the same time.

Example one:

*The Prophet (SAW) said, "**No (bartering of) two sas for one sa** nor two dirhams for one dirham is permissible"* (Bukhari).

The *haqiqi* meaning of the word *sa* as mentioned in the above hadith, is a term for a 'measuring bowl' used during the time of the Prophet (SAW). However, the *majaaz* meaning of the word *sa* is a reference for that which is contained within the literal measuring bowl (*sa*), be it wheat, dates, barley etc.

Here, the *majaaz* meaning is understood, and therefore one will not be able to exchange dates for dates unless it is of the same amount – otherwise it will be classed as *riba*. One will however, be able to exchange the literal *sa* (measuring bowl) for more than one *sas* – and this will be classed as profit.

Because the *majaaz* meaning has been understood in this case, the *haqiqi* meaning will be dropped altogether.

Example two:

In the Qur'an, Allah says, *"..But if you are ill or on a journey or one of you comes from the place of relieving himself or **you have contacted women (laa mastum)** and do not find water, then seek clean earth and wipe over your faces and hands with it.."* (Surah Al-Mai'dah, ayah 6).

The word *laa masa* can have two meanings:
1) To literally touch (*haqiqi*).
2) Intercourse (*majaaz*).

Here, the Hanafis take the *majaaz* meaning of 'intercourse', and the *haqiqi* meaning is dropped. The Shafi'is however, take the *haqiqi* as being understood from this ayah.

Example three:

Imam Muhammad mentions that if one were to request an amnesty in a state of war for his parents (*aaba*), then it would be understood in the literal (*haqiqi*) sense, and the *majaaz* meaning of including one's grandparents will not be valid.

Based on this, the Hanafis say that if someone had made a bequest for 'the *abkar* women from so-and-so tribe', the word *abkar* will only be understood in its *haqiqi* form (virgin women), as opposed to its *majaaz* meaning (women who have lost their virginity outside of wedlock).

Example four:

If someone left a bequest for 'Bani Fulan', the recipients will be the *haqiqi* (children) only, and not the grandchildren (*majaaz*).

Example five:

The Hanafi *ulama* have said that if one were to make an oath that he will never marry (using the word *tankiha)* a particular person – his oath will not break, even if he were to go to the extent of committing *zina* with that person. Here, the word *tankiha* is taken in its *majaaz* form to mean 'marriage' – as we should always think good of Muslims as a general rule. However, the *haqiqi* form (meaning 'intercourse') will be understood if he made that remark about his wife.

Contentious issues raised by the Shafi'is, and the Hanafi responses

Issue one:

If 'Person A' where to make an oath that he will never <u>set foot</u> in the house of 'Person B' – the use of the word 'foot' will be *haqiqi*. However, the Hanafis say that the oath will break even if he were to enter on a horse – and the Shafi'is object to this by saying that this is being understood now in its *majaaz* form. The issue here is that both the *haqiqi* and *majaaz* meanings cannot be understood at the same time.

The Hanafis respond to this by saying that the 'placing of the feet' is a phrase that can mean entering in any way or form – as that meaning has become associated with it due to its customary (<u>*'urf*</u>) use. Therefore, 'setting foot' is not literal, metaphorical, or a combination of both, but an action based on the customary meaning of the phrase.

Issue two:

If ‘Person A’ makes an oath that he will not stay in the house of ‘Person B’ – the *haqiqi* meaning will be a house that is owned by Person B, whilst the *majaaz* will be one that he has rented. The Hanafis say that the oath will be broken regardless of whether the house is owned or rented by Person B, and one again, the Shafi’is accuse the Hanafis of understanding both the *haqiqi* and *majaaz* meanings at the same time.

The Hanafis respond by saying that any place that a person lives in, becomes his ‘residence’ – according to its customary (*‘urf*) understanding. Therefore, regardless of whether he owns it or rents it, just ‘living’ in the house is sufficient for it to be classed as his residence.

Issue three:

If someone remarks that his slave will be freed the day (*yawm*) that ‘Person A’ arrives, then he will be freed when it happens. However, the word *yawm* can refer to ‘daylight hours’ in its *haqiqi* sense, or the ‘twenty-four period’ in its *majaaz* sense. So therefore, the oath will not be acted on properly.

The Hanafis respond by saying that whenever the word *yawm* is connected to a verb that does not prolong (i.e. it stops at a certain point), it gives the meaning of ‘whenever in the day’ as understood commonly according to its customary (*‘urf*) use. Therefore, this is not literal or metaphorical.

Part One: *Haqiqat* (Literal meaning)

The *haqiqat* is of three types:
1) *Muta’adhara*: Its literal meaning is impossible or very difficult to do.
***2) Majhoora*:** Its literal meaning is possible to do, but it is not generally done according to social norms.
3) *Musta’mala*: Its literal meaning is commonly used.

According to the consensus of the scholars, one will take the metaphoric meaning for the first two categories.

Example one:

If someone made an oath that he will not eat from a particular tree or pot – its literal meaning would suggest that he would not ever eat the literal tree or pot. Although this is physically possible, it would be very difficult and therefore classed as *muta’adhir*. In this situation, we would not act on the literal, but will understand the oath to be a metaphorical reference to the fruits of the tree, or

the contents of the pot. In this regard, if someone did literally eat the tree or pot – his oath will not be broken.

Based on the principle, if somebody made an oath that he will never drink from a particular well – if he were to then drink from it literally (like an animal), his oath will not break according to the consensus of the *ulama*. This is because the literal action like that of an animal is far-fetched (though not impossible) – *muta'adhir*, and therefore the original oath was understood in its metaphoric sense (using the hands, or a cup).

Example two:

If a *wakil* were to be chosen to help 'fight a case' on one's behalf, its literal meaning will be to help him physically 'fight' on his behalf. However, this literal understanding is one that is *majhoora* according to both Islam and *'urf*, and will therefore be understood in its metaphoric sense – meaning to 'defend'.

Rule: If the *haqiqi* meaning is *musta'mala* (common), and the *majaazi* meaning is not – then acting upon the literal is far better.

If it happens to also have a common metaphoric meaning, there is a difference of opinion as to how it should be understood between Imam Abu Hanifah and his students, Imam Abu Yusuf and Imam Muhammad. According to Imam Abu Hanifah, it is better to act upon its literal meaning, whereas according to his students – it is more preferable to act upon the *umoom al-majaaz*. This *umoom al-majaaz* is a middle meaning that incorporates both the literal and metaphorical meanings.

Example one:

If somebody makes an oath that he will not eat a particular 'wheat' – the meaning will now be transferred to the actual wheat itself.

Here, according to Imam Abu Hanifah, eating the actual wheat will break the oath (as it is *musta'mala*), but if he ate bread that is made from it – the oath will not break, as it is now in its *majaaz* form.

However, according to the students of Imam Abu Hanifah, the oath will break whether the person eats the actual wheat or anything that is produced from it. This is because *umoom al-majaaz* will combine both the literal meaning (the wheat), and the metaphorical meaning (its produce).

Example two:

If somebody were to make an oath that he will not drink from the Euphrates River – you will take the drinking method of animals as its literal meaning. Therefore, the metaphorical understanding will be the more civilised way (i.e. using hands, a cup).

Here, even though the metaphoric understanding is common – Imam Abu Hanifah says that we should take its literal meaning, whilst his students say that either method will break the oath.

Note: This is not contradictory to the similar situation regarding 'drinking from a well' as mentioned previously – as drinking directly from a well is not common, whilst drinking directly from a river is.

Part Two: *Majaaz* (Metaphoric meaning)

The *majaaz* being subservient to the *haqiqi* meaning

One tries to take the literal meaning when understanding something, and the *majaaz* meaning is understood only when the literal *haqiqi* meaning cannot be taken.

According to Imam Abu Hanifah, the *majaaz* is a deputy of the *haqiqi* in its meanings. Therefore, if a word or sentence makes sense according to the rules of grammar – one will act upon it literally. Only when the literal cannot be taken is the metaphorical selected.

The students however do not look at it grammatically, but in its legal implication. They say that if the literal is possible, however it is difficult to act upon because of a problem or barrier – the metaphoric meaning will be taken instead. And if the metaphoric itself cannot be taken, the entire sentence will become invalid and therefore 'discarded'.

Regarding this, Imam Abu Hanifah says that you still keep what is to be discarded in order to 'save' the statement – and that in that particular occasion; the metaphoric meaning will be sufficient.

Example one:

If somebody were to say about his slave (who is older than him); *"This is my son"* – the *majaaz* meaning will not be taken according to Imam Abu Hanifah's students, as its literal meaning is impossible (as an older person cannot literally be the person's son), despite it being a grammatically sound utterance.

However, according to Imam Abu Hanifah, because the sentence makes grammatical sense, you do not discard the statement - but you understand it metaphorically, and the slave becomes free, despite the utterance not making literal sense.

Example two:

A person may say in confession to a debt, *“Upon me is one-thousand dirhams, and upon this wall is one-thousand dirhams”*. According to Imam Abu Hanifah, the first part is acted upon, and the latter is discarded as it makes no sense – despite both utterances being grammatically sound. However, his students say that because the second part does not make sense, the whole statement will taken as invalid as a whole.

Using the same principle, the same rulings will be derived if someone were to say, *“My servant and my donkey will be freed”* – as it does not make sense to ‘free a donkey’.

Contentious issue raised by the Shafi’is, and the Hanafi response

The Hanafis have said that when someone says about their older slave, *“This is my son”*, that they will take the metaphoric meaning of the utterance and the slave will become free - as the grammatical structure of the sentence is correct. The Shafi’is’ use this example to object that there is another example where the Hanafis are apparently not acting on their own *usul*. The case in question is when one says about his wife; *“This is my daughter”*. The literal meaning of this statement is that she is his real daughter, whereas the metaphoric meaning is that it is a reference to a divorce through *talaq*. Here, the Hanafis do not take either meaning and treat it as invalid as a whole. Therefore, the objection from the Shafi’is is why it is not acted upon using the same principle used with *“this is my son”*?

The Hanafis reply by mentioning that in this situation, the wife will not become *haram* as we know whom her literal father is, and divorce will not be meant irrespective of whether she is younger or older than her husband. The reason being; if the utterance (*“this is my daughter”*) were true, then there would have been no *nikah* at all. This is because it would not have been correct in the first place, and therefore it would negate its consequences, such as *talaq*. To add to this, there is no *isti’ara* meaning here (implying something else with another word) because there is a contradiction.

With the first case (*“this is my son”*), the master cannot be the literal father, but can be metaphorically. This is because *being a son* does not negate establishing ownership for the father, as it is possible for a father to own a son for a momentary second (though not as a slave), but never is it allowed for him to be married to his daughter – even for a momentary second.

Section Five:
Al-Isti'ara (An utterance that means something else)

***Isti'ara*:** A type of metaphoric meaning, where something is said whilst implying something else.

According to the rulings of *shari'a*, *isti'ara* is common, and found through two ways:
1) Where *ittisal* (connection) is found between the *illah* (cause) and the *hukm* (ruling/consequence).
2) Where *ittisal* (connection) is found between the *sabab* (ways/paths) and the *hukm* (ruling/consequence).

What are the *ittisal*, *illah sabab* and *hukm*?

Example: If travelling from A to B is the *hukm* (ruling/consequence), the *illah* (cause) to travel to B will be the different means of transport (such as car, train etc.), and the *sabab* (ways/paths) will be the way to arrive at B, depending on the *illah* (cause).

1) Regarding the first category:
It makes the *isti'ara* valid and correct from both sides, meaning it is permissible to mention the *illah* and take the meaning of the *hukm* and vice-versa. For example, you may say, *"We're at home"* on the phone whilst driving, when in reality you are just approaching your home. Therefore the *hukm* (to arrive at your home) is understood. Similar, you may have literally left your house, but you may say, *"I'm just at my house"*.

2) Regarding the second category:
It makes the *isti'ara* obligatory (*wajib*) in one of the two ways – and that is that you mention the *sabab* (ways/paths), and take the meaning of the *hukm*, but not the other way around.

Examples from first category:

A master may say to his slave, *"If I ever become an owner of a slave ("malak-tu abdan"), then he has become free"*. If this master happened to own just one half of the slave, it would not be valid, as he does not have full rights to the slave. If he then sold his share, and later became the owner of the other half – because the entire slave was not under his ownership all at once, once again, the statement will be invalid.

Here the phrase *malak-tu abdan* was used (implying full ownership), but if he implied *in ishtaray-tu abdan* – then the slave would have become free, as it would mean 'to buy' no matter how small the percentage.

Here, *shiraa* (buying) is the cause (*illah*), and *millk* (ownership) is the consequence (*hukm*). If from here, *shiraa* is taken to mean *millk* (ownership), his intention will be valid and correct, or the word *milk* is taken to mean *shiraa*, it is also correct. Therefore, *isti'ara* is now accepted between the *illah* and the *hukm* from both sides.

However, where there is suspicion that a person is taking advantage of this, he will not be believed – not because this understanding of *isti'ara* is not correct, but because of suspicion of his intentions, and therefore the *Qadi* will seek to understand it according to his literal utterance, and not according to his possible intention.

Examples from second category:

When a husband says to his wife, *"I have freed you (harartuki)"*, and intends divorce – then it will be valid through *isti'ara*, and therefore the *nikah* is broken.

Here the phrase *harartuki* is the *sabab* (way/path), and *talaq* (divorce) is the *hukm* (consequence). This is because, in reality, the phrase *harartuki* establishes an ending.

When a master says it to a slave-girl, all benefits of ownership of the slave-girl is also gone and therefore the phrase *harartuki* becomes an absolute *sabab* for deriving any type of benefit, and now the *talaq* is established because the right for these benefits have been annulled.

However, if he said *talaq* to a slave-girl, it will not mean an ending to the ownership, as she is not his wife. This is due to the *sabab* not being understood if the *hukm* is uttered.

Based on this, if he said the opposite about a slave-girl; *"I have gifted her (hiba)"* or *"I have become a owner (millk)"* or *"I have purchased her (bay')"*, the *nikah* will be established with the slave-girl, in order to allow him to have the right to have relations with her. Here, the word *hiba* is the *sabab*, and the 'rights to relations' is the *hukm*. Therefore, the word *hiba* is taking the metaphorical meaning of *nikah* with a free woman, and ownership with a slave-girl – but it cannot be the other way around like mentioned earlier (to say *nikah* and take the meaning of *hiba*).

Objection to the students of Imam Abu Hanifah

The students of Imam Abu Hanifah say that the literal meaning (*haqiqi*) of a word should be possible to act upon, and if not – only then can you take a metaphorical (*majaaz*) meaning, otherwise it is discarded. The objection is why then do they say that when a husband, instead of saying *"nikah"*, he uses the word *"hiba",* it is *nikah* because of its metaphorical meaning? Because the literal *bay'* or *hiba* is not possible for a free woman!

The students reply by saying that even though it is far-fetched, it is still possible to be the owner of a free woman and then either gift or trade her. For example, if she apostates and runs away to join an enemy army, it is possible for her to then be captured and subsequently become a prisoner (and therefore possible to gift, have relations with, and trade).

Using this principle, if someone said, *"I will touch the sky"*, it will not be discarded as an invalid oath. The Hanafis say the oath is taken literally, and therefore he will have to pay a *kaffarah* in order to compensate for this 'oath'. The reason for this being that although it is far-fetched, it is still physically possible to touch the sky, as Prophet Sulaiman (AS) was able to travel through the skies as the wind was subservient to him, as well as the example of the *mi'raaj* of the Prophet Muhammad (SAW) through the heavens.

Section Six:
Sareeh (Clear) and *Kinayah* (Unclear and ambiguous)

***Sareeh*:** When the statement is clear, and what is being said is apparent.

***Kinayah*:** The statement is not clear, and is understood based on its intention, or prevailing situation.

Part One: *Sareeh* (Clear)

The *hukm* of this is that it establishes its meanings, whether it is a 'description' or when 'one is called'. It does not require any type of 'intention', as the word itself is clear without any ambiguity.

Examples:

If a husband says to his wife, *"You are divorced"* or *"I have divorced you"* or *'"O divorcee"* – it is a straightforward *talaq*, and therefore it is understood regardless of its intention. Similarly, if he said to a slave, *"I have freed you"* or *"O free person"* – the slave will become free.

Based on this, the Hanafis say that *tayammum* gives the meaning of *taharah* (purification). It is because Allah has said, *"..then seek clean earth and wipe over your faces and hands with it. Allah does not intend to make difficulty for you,* ***but He intends to purify you (yu'tahirrakum)****.."* (Surah Al-Mai'dah, ayah 6). It is clear in this, that *taharah* (purification) is attained with the action of *tayammum*, as that is what it is there for (*yu'tahirrakum* is a clear *sareeh* word).

Hanafi vs Shafi'i differences

According to Imam Shafi'i, there are two opinions on *tayammum*:
1) It has to be *taharah* done out of necessity, as is just an alternative to *wudhu* in extenuating circumstances.
2) *Tayammum* is not pure in itself, but rather it is a 'concealer' of impurity.

The Hanafis reply to the Shafi'is by mentioning that the Qur'anic ayah is clear proof that it makes you pure in and of itself (*yu'tahirrakum*), and makes you pure just as with water – rather than as a 'concealer'. Therefore, it is the exact same substitute in the absence of water.

Based on these differences between the two *madhabs*, the rulings have been derived based upon the two differing opinions:

- *Tayammum* is permissible before the *salaah* time according to the Hanafis, but not according to the Shafi'is.
- The completing of two obligations (i.e. two prayers) with one *tayammum* is permissible according to the Hanafis, but the Shafi'is require a renewal of *tayammum* before each *salaah*. According to the Hanafis, it is also permissible for the one with *tayammum* to lead the *salaah* of someone who has done regular *wudhu*.
- According to the Hanafis, *tayammum* is allowed even when there is no real necessity (such as an ill person who may not want to use cold water for *wudhu*). The Shafi'is only do it as a last resort with the fear of a loss of life or limb due to seeking *wudhu*.

For *'Eid* or *janazah salaah*, there is no *qada* – and therefore if someone fears that doing *wudhu* will make him miss it, he may do *tayammum*.

Part Two: *Kinayah* (Unclear and ambiguous)

The *kinayah* is a word in which it's meaning is hidden (the opposite of *sareeh*). It is like a metaphoric (*majaaz*) meaning, before it becomes well known – as it is unclear and ambiguous.

The *hukm* of the *kinayah* word is that its rulings are established at the time of the intention. For example, a husband may say to his wife, *"Go"* – but one would not know if this were a reference to his desire for her to leave the room, or the marriage itself (as it is ambiguous). However, if the prevalent situation dictates that the husband intended *talaq* when he said, *"Go"* – it would be understood as *talaq*. For example, if during an argument, the wife said, *"Give me a divorce"*, and he said, *"Go"* – then it is meant as a divorce. Even if he says he did not intend divorce, the situation suggests that he did.

It is necessary that there is some *daleel* (evidences or clues) in order to remove the doubt (of what is meant). This is so that we can give preference to one of the two meanings in that situation. Because of this meaning, phrases like *'you are separated'* and *'you are haram'* etc. are *kinayah* in issues of *talaq* - as the intention is concealed, and a *daleel* needs to be sought in order to find the intention.

Punishments cannot be established with the use of ambiguous words (where the meaning is hidden) in evidence given. For example, if someone were to admit to a crime in an ambiguous way, he cannot be punished - as what he did cannot be established (unless he used a clear *sareeh* word). So, if a non-speaking person came to a judge and indicates that he stole something, there will be no penal punishment on that person. Also, if somebody accused another man of *zinaa*, and another person heard this and said, *"You are telling the truth"* – there is no punishment, as this verification can mean for something other than the accusation. There *has* to be *sareeh* evidence in order to carry out a punishment – you cannot even use the prevalent situation as an indication for proof.

Section Seven:
Mutaqaabilaat (Opposites)

As well as *sareeh* and *kinayah*, there are four more similar pairs of 'opposite' (*mutaqaabilaat*) terms. Four of these have clear, open meanings, whilst their opposites have discreet, hidden meanings. These are:

1) ***Dhahir*** (apparent meaning, where the meaning is clear or apparent for the listening as soon as it is heard) and ***Khafee*** (the real meaning is hidden due to an external factor not related to the wording or grammatical structure).

2) ***Nas'*** (the reason behind why a sentence is expressed) and ***Mushkil*** (problematic in understanding due to its ambiguity, and therefore needs further investigation).

3) ***Mufassar*** (when the meaning is obscured, and then the person explains what he has said, so that it is understood in such a way that there is no possibility of any further interpretation or specification remaining) and ***Mujmal*** (where there are many possible meanings, and it in unclear as to what is meant until the speaker clarifies his intention).

4) ***Muhkam*** (its clearness is so strong and obvious, that one *must* act/believe in it, and to do otherwise is not allowed) and ***Mutashabihat*** (something that is so ambiguous that no one really knows what it means, except Allah).

Part One: The 'Open' terms (*Dhahir*, *Nas'*, *Mufassar*, *Muhkam*)

Dhahir and *Nas'*

***Dhahir*:** The name for every sentence that does not require the listener to ponder over. Its 'apparent' meaning is clear as soon as it is heard.

***Nas'*:** A clear text, which clarifies the reason behind why a sentence is expressed.

Examples:

In the Qur'an, Allah mentions that He has made *bay'* lawful whilst *riba* is excluded from this - *"..But Allah has permitted* ***bay'*** *and has forbidden* ***riba**..*"* (Surah Al-Baraqah, ayah 275). The disbelievers claimed that both *bay'* and *riba* are the same, but this ayah was revealed to show a differentiation between the two, as one is lawful and the other unlawful. In this example, the lawfulness of *bay'* and the unlawfulness of *riba* is straightforward to the listener (and hence, the *dhahir*). This ayah has also now become a *nas'* in order to show the differentiation between both of these terms as not being the same.

Allah also says, *"And if you fear that you will not deal justly with the orphan girls, then marry those that please you of (other) women, **two or three or four**. But if you fear that you will not be just, **then (marry only) one**.."* (Surah An-Nisa, ayah 3). This is *dhahir* because its meaning and permissibility is clear through hearing, and the *nas'* is that the sentence ayah was revealed to explain the number of wives allowed for each man to marry.

Allah says, *"There is no blame upon you if you **divorce women you have not touched nor specified for them an obligation**.."* (Surah Al-Baraqah, ayah 236). The *nas'* from this ayah is to allow an explanation for those whose *mahr* (dowry) has not been stipulated. The ayah is telling us that it is possible for the husband to divorce his wife by *talaq* in this condition, and they are free to marry others. It further indicates that the *nikah* will still be correct if the *mahr* is not stipulated.

In a hadith, the Prophet (SAW) said, *"Whosoever becomes the owner of a close relative(s), they become freed straight away"*. The *nas'* of this statement is to explain this *hukm*, and the *dhahir* is establishing the ownership for the owner for a momentary moment.

The *hukm* (ruling) of *Dhahir* and *Nas'*

The *hukm* of *dhahir* and *nas'* is to act upon both of them. Whether they are both *'aam* or *khass*, it is *wajib* to act upon them, even with the possibility of another meaning.

For example, when one buys his close relative (who automatically becomes free by default), the buyer is considered as the 'freer' because he was the owner for a momentary second, and the freed siblings inheritance (*walaa*) will come to him. So why is the word *walaa* used instead of the normal word for inheritance (*miraath*)? The word *walaa* is a distinct word to use, but it is for someone who became free and then started gaining wealth. Therefore, all of his inheritance from the newly gained wealth will go to the relative that freed him.

Conflict between the *Dhahir* and *Nas'*

Rule: If there is a conflict between the two, a preference is given to the *nas'* over the *dhahir*.

For example, if a husband said to his wife, *"Divorce yourself"*, and she replied, *"I have separated myself"* - the *talaq* will become a *talaq raj'ee* (a revocable divorce). The idea of the husband was that he will be given a revocable *talaq*, but she replied with an irrevocable *talaq ba'in*. In this example, the *nas'* was the *talaq* so that it can be revoked within the *iddah* (waiting period), but it is apparent (*dhahir*) that the word used by the wife is that she has given an irrevocable divorce – so the *nas'* is given preference (*talaq raj'ee*).

In Sahih Al-Bukhari (5686), narrated by Anas: *"The climate of Medina did not suit some people, so the Prophet (SAW) ordered them to follow his shepherd, i.e. his camels, and drink their milk and urine (as a medicine). So they followed the shepherd that is the camels and drank their milk and urine till their bodies became healthy. Then they killed the shepherd and drove away the camels.."* In this hadith, the apparent (*dhahir*) reading indicates that is that it is permissible to drink the urine of camels, and the *nas'* is that it has *shifaa* (a means for cure) in it. However, in numerous other hadiths, it is mentioned that most of the punishments of the grave will be because people have not been looking after their hygiene (i.e. urine) etc. It is a *nas'* that one should refrain from all types of contact with urine etc. from all of these narrations, as well as the many other narrations of the importance of hygiene, and the avoidance of contact with filthy substances. However, when you compare the two hadiths, they seem to contradict. Therefore, *nas'* is given preference over the *dhahir* (that drinking urine is allowed), and hence, drinking urine is not lawful due to it being filthy – although it does contain some *shifaa*.

There is hadith that says that for those crops in which the heavens have rained – one would have to give $1/10^{th}$ in charity from the results of these crops. This *nas'* is to tell us the rules as a result of this occurrence. However, in another hadith, the Prophet (SAW) says that there is no *"sadaqat"* due for greeneries. This hadith is *muawwal* (meaning selected from multiple meanings), and interpreted regarding the negation of the charity – and therefore telling us that you do not have to give that $1/10^{th}$ in charity, as the word *sadaqat* has the possibility of a few meanings (*sadaqah*, *fitr*, *'ushr*, *zakaah*), and hence, the *nas'* of the first hadith has been given preference over the second hadith – so $1/10^{th}$ must still be given.

Mufassar

Mufassar: Those words where the meaning is obscured, and then the person explains what he has said, so that it is understood in such a way that there is no possibility of any further interpretation or specification remaining, other than what he has said.

Examples:

When one says that he owes *"ten dirhams"* – it can refer to many currencies, but when he clarifies it as *"ten Palestinian dirhams"* – it becomes *mufassar*, and it cannot be taken as any other type of *dirham*.

In the Qur'an, Allah has said that all of the angels prostrated before Adam (AS) – *"So the **angels** (malaa'ikah) prostrated - **all of them** (kulluhum) **entirely** (ajma'oon)"* (Surah Al-Hijr, ayah 30). The word *malaa'ikah* is apparently *dhahir* (all of the angels), although it then has a possibility of being further specified (*takhsees*) through some exclusions. However, the door of *takhsees* was closed with the word *kulluhum* (all of them). Then there is a possibility of *tafriqah*

(separation, not prostrating together), but this door of *ta'weel* (interpretation) was closed with the word *ajma'oon* (entirely). Here, the *tafseer* (explanation) is being done through the *mufassar* terms, so that everything is being explained in such a way so that no further explanations are needed.

Also, a man may say, *"I married so and so for a month"*. The *dhahir* is that he got married, however, the possibility of *nikah mut'ah* (of the Shi'a) remains. When he said the word 'month', he explained his intention by saying that he was not doing a legitimate *nikah* – and therefore took the intention of it only being for a month. If he did not mention the word 'month', we would assume that it was a legitimate *nikah*.

If someone said, *"Upon me is a thousand - because of the value of this slave or these goods",* the *nas'* here is that he owes a thousand. However, there is the possibility of *tafseer* (explanation) remaining as to why is he owing this amount, and what he is he owing it for? However, when he mentioned that it is for the value of the slave or the goods – he explained regarding why he owed this thousand (he is owing it because he has bought the slave/goods, and therefore, not as a debt or compensation etc.). So *mufassar* would be given preference over the *nas'* until he takes the slave or goods into his possession – meaning, it will only be owed if he takes the slave or goods into possession.

Rule: Where there is a contradiction between the *nas'* and the *mufassar*, the *mufassar* is to be given preference.

Similarly, if someone again said, *"Upon me is a thousand"* - the *dhahir* is that it is a confession of him owing a thousand, and the *nas'* is that he owes this thousand (according to the currency of where he is living). If he did not say anything else at all, it would be paid according to the country that he is living in, but if he adds a *mufassar* by explaining, *"A thousand US dollars"* – the *mufassar* will be given the preference over the *nas'*.

Muhkam

Muhkam: A category where the clearness of the word or sentence is even stronger than that of the *mufassar*. It is in such a way that its opposite is not allowed at all. For example, the Qur'an says, *"..He creates what He wills, and He is the Knowing, the Competent"* (Surah Ar-Rum, ayah 54) – this is a *muhkam* ayah, and therefore we cannot take meaning that is opposite to it.

If someone were to say to someone, *"Upon me is a thousand for the value of this servant"* – it is *muhkam* in terms of a thousand pounds being given in exchange for the value for the servant. Although the example is like that given for *mufassar*, the *muhkam* is more concerned with the *hukm* (ruling) of the statement – that one is obliged to give a thousand if the servant is bought. And based on this, there are similar examples.

The *hukm* of *mufassar* and *muhkam* is that acting upon the two is necessary. If A were to ask B for a book, to say it is "Book X" will be the *mufassar*, and the *muhkam* is that you have to give me the book – and that is *fard*.

Part Two: The 'Closed' terms (*Khafee*, *Mushkil*, *Mujmal*, *Mutashabihat*)

Khafee

***Khafee*:** Where the meaning is hidden because of an external reason, and not because of the actual word itself, or its structure.

Examples:

Allah says in the Qur'an, *"(As for) the thief, the* ***male (saariqu)*** *and the* ***female (saariqatu)****, amputate their hands in recompense for what they committed as a deterrent (punishment) from Allah. And Allah is Exalted in Might and Wise"* (Surah Al-Ma'idah, ayah 38). This ayah is clear with regards to the punishment for the thief (the *sariq*). But this ayah is vague regarding whether this includes pickpockets (i.e. *tarraar*) or those who may steal from graves (i.e. *nabbaash*), leading us to wonder if they face the same punishment? This is because the *sariqa* (thief) has to meet the conditions of being a *'sariqa'*, such as the item having to be at least to the value of ten *dirhams* (approximately £22) according to *Hanafi fiqh,* and stolen from a secure place, as well as many more. Therefore, if one were to pickpocket or dig a grave, it is debateable as to whether the place was 'secure', and because of this reason, Imam Abu Hanifah says that these two criminals will not have their hands amputated.

Allah says, *"The (unmarried) woman or (unmarried) man found guilty of sexual intercourse - lash each one of them with a hundred lashes.."* (Surah An-Noor, ayah 2). This ayah is clear for the *zaani* (fornicator), but it is slightly unclear and ambiguous when it comes to homosexuality – does the same meaning of *zinaa* apply? Imam Shafi'i is of the opinion that it is the same punishment, but Imam Abu Hanifah is of the opinion that *zinaa* is specifically an act between a man and a woman, and therefore it is obscure (*khafee*) regarding homosexuality. It is not that we do not know what *zinaa* means, but we are unsure as to whether it applies to other situations if they fall outside of their literal meaning.

If somebody made an oath that he will not eat fruits – it is clear regarding those fruits (*faakiha*) that are normally eaten as a snack (rather than as a meal), but it is obscure regarding grapes and pomegranates. The word *faakiha* refers to fruits that are eaten as snacks and therefore you know what he meant (hence, *dhahir* for those particular fruits). However, it is unclear (*khafee*) when it comes to grapes and pomegranates – this is because these were considered as more than just a snack in certain customs. In *fiqh*, when it comes to an oath – one must understand it according to the *'urf* (customs) of that particular country.

Rule: The *hukm* of *khafee* is that it is *wajib* to investigate it until the ambiguity is removed. If it is not found, it will come under a different category – such as *mushkil*.

Mushkil

***Mushkil*:** Something that is very difficult to understand, and it leaves one confused and unsure of whether it applies to a particular thing – to the point that one cannot make a decision on its meaning. Its ambiguity is so problematic, that it is ever more unclear than the *khafee* – to the extent that the meaning is not achieved unless one searches for it, and then through pondering, until he separates it from something similar.

For example, somebody may make an oath that he will not eat *i'tidam* (curry). The word *i'tidam* literally means something in which you can soak break in, in order to eat it. This meaning is clear when it comes to vinegar, because it can be used to eat bread in that way (as soldiers would do in the past). However, when it comes to the juice from eggs, or cheese – it becomes *mushkil* (unclear), and it is asked – is this *i'tidam*? As if one were to have an egg or cheese sandwich, it may be classed as *i'tidam* in some parts of the world, whilst not in others. Therefore, you will have to find the meaning of *i'tidam* first, and then ponder as to whether this meaning can be applied to the juice of the egg, or cheese. In contrast, understanding the *khafee* involves a far simpler research process.

Mujmal

***Mujmal*:** Those words which have many meanings and possibilities, and one does not know what the meaning is unless the speaker was to explain it himself. Therefore, it's meaning is based on the intention of what the speaker intended, despite what it may appear to mean.

The word *riba'* is an example of a *mujmal* term, even though it literally means an 'increase'. Although we know its literal meaning, we do not know what is meant by the context in which Allah mentions it – until it was specified through hadith; a specific increase which is free from any substitute or reward in those transactions which are *muqaddara* (those items which are sold through measurement) and *mutajaanisa* (items which are the same). Therefore, you cannot sell 'one date' for 'two dates' – that will be *riba'*. Without this explanation, the literal word *riba'* does not indicate towards this meaning, and therefore cannot be understood through pondering, until the lawmaker (Allah or the Prophet (SAW)) explains it for us.

Mutashabih

Mutashabih: A word or sentence that is so ambiguous that no one knows what it means. For example, the *muqatta'at* ayahs in the Qur'an (i.e. Alif Lam Meem), and the nature of Allah's Attributes (such as Hand, Face). These are all *mutashabihat*, and only Allah knows what these mean in their full reality. However, one has to believe in the truthfulness of what Allah has said, despite not knowing what its meanings are, even until the meaning has come.

Section Eight: Where The Literal (*Haqiqi*) Meaning of The Word Has Been Omitted

There are five situations in which the literal (*haqiqi*) meanings are not taken. These categories are:

1) *Dalalatul 'urf* - The literal (*haqiqi*) meaning is dropped due to *'urf* (custom).

In this situation, although the *haqiqi* meaning is considered – only a partial meaning is taken in light of its customary understanding. This is because the establishing of rules is through words, and therefore, the implication and intention of the said words explains the intention of the speaker. If the word is common amongst the people, the common meaning is an evidence for what is apparently meant.

For example, if a British person asks for 'chips' whilst in America, it will be taken to mean 'crisps' - as 'chips' is the term for 'crisps' in that area. Also, if somebody were to make an oath that he will not eat eggs, it will be understood according to the custom of the people in that area. Therefore, it will not mean any type of egg, but the egg that is customary for people to eat in that particular area (such as a chicken egg) – and therefore, his oath will not break from eating the egg of a pigeon, if it was not common to be eaten in that area.

Rule: From this, it becomes clear that omitting the *haqiqi* meaning does not necessarily give it a *majaaz* (metaphoric) meaning, but a partial *haqiqi* meaning can be understood.

If one made an oath that he 'intends' (literal meaning of the word *hajj*) to walk to the *ka'bah*, the rites of *hajj* will now be obligatory on him. If he were to simply walk to the *ka'bah*, his intention would have been complete, but because of the customary (*'urf*) meaning of this statement – you would naturally assume that he wants to go and perform *hajj*.

2) When the actual word itself drops the literal meaning.

For example, if someone says, *"Everything in my ownership (mamluk) is freed"* – the *muqaatab* slave (one who has a deal to purchase his freedom), and the one who is shared will not be freed, unless when he intends to include them in the oath. This is because the word *mamluk* refers to something that is fully in one's ownership, and therefore these two excluded peoples do not fall under the definition of *mamluk*, and the owner cannot engage them in transactions (*tasarruf*), nor engage in relations with them (if female).

If a *muqaatab* slave marries the daughter of his master, and then his new father-in-law (master) passes away, the daughter inherits her husband – and the *nikah* remains valid.

Difference between *muqaatab* slave and *mudabbar* (freed after master's death, if agreed beforehand) slave

This is however the total opposite with the *mudabbar* slave and the *umm walad* (slave girl who has given birth to a child for the master) – as ownership of them is complete to the master, and therefore they both become free by the oath.

The differences between all of these types of slaves are a deficiency in the level of ownership between them. The *mudabbar* and the *umm walad* are fully owned, but there is a deficiency in slavery – as anytime the master dies, they are freed - and this is something that is bound to happen. With a *muqaatab* slave on the other hand, there is a deficiency in his ownership, yet his slavery is in full – based on the following hadith; *"If he has one dirham left to pay, he will be treated as a slave"*.

Based on this, if someone frees a *muqaatab* slave, then it will be permissible as the slavery is in full, but it will not be permissible for him to sell him due to his lack of 'full ownership'. But for a *mudabbar* or a *umm walad*, it will still be permissible to free them out of good will – since they are under full slavery whilst one is alive, but they cannot be sold – due to the deficient level of slavery.

3) Where the *haqiqi* meaning is omitted due to the structure of the sentence, depending on the prevailing situation.

Here, the clues in the sentence indicate that the literal meaning is not meant or taken in that particular instance. For example, Imam Muhammad has mentioned; during war, if a Muslim says to an enemy that has barricaded himself in a fort, *"Leave if you are a man"* – the prevailing situation indicates that it is not a reference to his gender, but to his bravery.

If a Muslim was to say in response to a request for amnesty, *"Soon you will know what is amnesty"* – the prevailing situation hints that it is meant sarcastically, and not literally.

If someone asked another person to purchase for him a slave-girl who can help him in *khidmah*, the person will not be allowed to buy someone who is blind or crippled, as his specific request cannot be fulfilled by that person, and therefore it will not be a valid transaction. If he had made a request for a slave-girl to engage in relations with, but a slave-girl was brought who shared the same suckle mother – once again, the transaction will not be fulfilled, as she is *haram* for him.

Based on this, we say that when a fly falls into your food, then 'press the fly down, and then remove it'. This is because of a hadith in which it explains that in one of the two wings is a disease, and in the other – the cure. This hadith is an example where the literal meaning is not a legal ruling, but just health advice. The cure is administered by putting the fly down in order to remove the disease, and not for an Islamic reason – so that one does not fall ill. Therefore, it is not a sin if one does not do it.

The Qur'an says, *"Zakaah expenditures are only for the poor (fuqaraa) and for the needy and for those employed to collect (zakaah) and for bringing hearts together (for Islam) and for freeing captives (or slaves) and for those in debt and for the cause of Allah and for the (stranded) traveller - an obligation (imposed) by Allah. And Allah is Knowing and Wise"* (Surah At-Tawbah, ayah 60). Based on this ayah, Imam Shafi'i says that when it comes to *zakaah* – you have to give it to every type of recipient that is mentioned. To add to this, because the word *fuqaraa* is in its plural form – you have to give it to at least three people in each of those categories. However, the Hanafis say that this ayah is not there to explain who to give *zakaah* to, but to counteract a desire that the hypocrites had in keeping the *zakaah* for themselves.

4) If the speaker himself is indicating that the literal meaning is not meant, because of who he is.

Examples:

The Qur'an says, *"..And say, "The truth is from your Lord, so whoever wills - let him believe; and whoever wills - let him disbelieve.."* (Surah Al-Kahf), ayah 29). If one were to take this ayah literally - it can be taken as a basis for legalising *kufr*, but clearly it is not understood in this way. This is merely a warning that everyone is responsible for his own choice of actions. Allah is Wise and Merciful, whereas *kufr* is evil – and therefore, Allah will never say anything like this.

When a traveller makes a local person a *wakil* (agent) in order to 'buy meat' – it will be based on cooked meat or at the very least – roasted. However, if he is at home, and he made a *wakil* buy him meat – then it will be based on raw meat.

From this category, we have *yameen al-fawr* (an oath that is fulfilled straight away):

For example, one may say to another; *"O brother, come and eat with me"*, and the other person may reply, *"By Allah, I will not have breakfast with you"*. The meaning of this oath will refer to that particular meal that he was called to. If he did end up eating with him later on, even on the same day, that oath will not be broken.

Similarly, if a woman is about to leave her home, and her husband says, *"If you were to leave, then you are divorced"* - the ruling is therefore restricted only to

that particular situation, and the *talaq* would only be conditional on that particular instance. If she were to leave afterwards – it would not result in *talaq*.

5) Sometimes the literal meaning is dropped, because of who the person is, and the situation does not accept it.

Examples:

If *nikah* was conducted with a free woman using words such as *bay'* (trade), *hiba* (gifting), *tamleek* (ownership, or *sadaqah* (charity) – clearly their literal meaning will not be meant as they are not slaves, and therefore, the metaphoric meaning will be understood.

Similarly, as mentioned in an earlier chapter - if somebody were to say about his slave (who is older than him); *"This is my son"* – the literal meaning is impossible (as an older person cannot literally be the person's son), and therefore, according to Imam Abu Hanifah, you understand it metaphorically - and the slave will become free, despite the utterance not making literal sense. However, due to the impossible nature of the utterance (although grammatically sound) – the students of Imam Abu Hanifah will choose to 'discard' the sentence instead of taking the metaphoric meaning.

Section Nine:
Understanding Meanings From Texts

The previous lessons focused on understanding and investigating the meanings of particular types of words, but in this section, we will be focusing our investigation on sentences.

In this, we have four categories:

1) *'Ibaarat an-nas'* (direct meaning taken from the sentence)

This explains why a particular sentence has been brought, and like the *nas'* category, it denotes what the intention was behind why that sentence was brought forward.

2) *Ishaarat an-nas'* (indirect meaning taken from the sentence)

This is the hidden meaning from a particular sentence, and something that cannot be understood from the actual sentence itself - but a meaning that is hidden within it. Although it is established from the *nas'*, it was not brought for that particular reason.

3) *Dalalat an-nas'* (the literal meaning is not meant from the sentence)

Where a person who knows the Arabic language will be able to define that Allah or the Prophet (SAW) did not mean the literal meaning in that instance. It is known from its literal utterance, without requiring *ijtihad* or through *istinmbaat*.

4) *Iqtidaa an-nas'* (an assumed particle within a sentence)

This is when there is a hidden particle within a sentence that one has to assume, in order for the sentence to make sense in that particular instance.

Part One: *Ibaarat an-nas'* and *Ishaarat an-nas'*

Example one:

Allah says in the Qur'an, *"..**For the poor (fuqara) emigrants** who were expelled from their homes and their properties, seeking bounty from Allah and (His) approval and supporting Allah and His Messenger, (there is also a share). Those are the truthful.."* (Surah Al-Hashr, ayah 8). Here, the Qur'an mentions that the property of Banu Nadhir (who had been expelled from Madinah) should go to the poor from the *muhajireen* that had their property stripped of them when they had left Makkah.

This ayah has been brought to explain who is worthy of the booty; hence it has become the *nas'* regarding this matter. In addition, it is telling us about *istilaa* – a concept where the disbelievers take control of the property left by the Muslims. The scholars derive this information from the word *'fuqara'*, as only the one who owns nothing can be considered a *faqir* (poor). Thus, becoming an indication (*isharah*) that the disbelievers had now 'taken over' their Makkan properties upon their migration to Madinah. For if the wealth had remained with the believers – then their poverty will not have been established – and the word *aghniya* would have been used instead of *fuqara*.

After the poverty of the *muhajireen*, and the ownership for the disbelievers has been established – the following are derived regarding the rulings of *istilaa*, and for any trader who may wish to buy from these disbelievers:
1) A believer can buy back an item from a disbeliever. It will therefore belong to him, and not the original Muslim from whom it was stolen (as the disbeliever had become the full owner of the item).
2) All of the various permissible transactions (buying, gifting, freeing etc.) will be permissible regarding those items.
3) If Muslims were to then re-conquer the land, this land will be treated as booty - and every single *mujahid* will be entitled to his portion of this booty. Therefore, a Muslim cannot lay claim to something that he had previously owned.

Example two:

Allah says in the Qur'an, *"..**It has been made permissible for you the night preceding fasting to go to your wives (for sexual relations)**. They are clothing for you and you are clothing for them. Allah knows that you used to deceive yourselves, so He accepted your repentance and forgave you. So now, **have relations with them and seek that which Allah has decreed for you**. And eat and drink until the white thread of dawn becomes distinct to you from the black thread (of night). Then complete the fast until the sunset.."* (Surah Al-Baqarah, ayah 187).

The *isharat an-nas'* here tells us that intimacy during the 'night' is permissible in Ramadan – even if one were to finish intercourse just before *subh sadiq*. Therefore, to start the fast in a state of *janaabah* (major impurity) is permissible, as it will take a while for one to remove this impurity. It is because this impurity is from the necessities of intimacy, and therefore indicates that major impurity does not necessarily break one's fast.

Because of this, the following are allowed whilst fasting, as understood through both *nas'* and indication (*isharah*):
1) It is permissible to be intimate during the nights of Ramadan.
2) It is permissible to start the fast in a state of *janaabah*.
3) To gargle one's mouth, and to clean one's nose is allowed whilst fasting, as long as it does not go in. Therefore, this further indicates that to merely taste something does not break your fast. So, if the water is sweet and its taste can be found in the mouth whilst gargling – that also does not break the fast.

These are the rulings derived from just one ayah by the *fuqaha*. To add to this, the following can also be derived:

4) To have a wet dream will not break the fast.
5) Cupping is allowed while fasting.
6) It is permissible to oil one's hair.

This is because of what the ayah tells one to refrain from: intercourse, eating, and drinking all the way up until sunset. Therefore, highlighting that the pillar of *sawm* is established through refraining from these three things, and that anything which does not hinder this definition is allowed. By this definition, having a wet dream is allowed – since it is not intercourse, cupping is not any of those, and neither is oiling the hair.

To add to this, a further ruling can be derived regarding whether it is necessary to make an intention to fast during night time. In this, Imam Abu Hanifah is of the opinion that it is not necessary to make an intention before *subh sadiq* for the obligatory fast – as long as the intention is made sometime before *dahwatul kubra* (half way between *subh sadiq* and maghrib time). It has been derived by the Hanafi *fuqaha,* that since one can have relations just before *subh sadiq*, the entering of *subh sadiq* may not allow time to make an intention – and therefore, it can be made within the fast itself. A similar example is given - as found in the nikah contract, where although the *mahr* is *wajib*, the nikah will still be valid before the *mahr* is even stipulated.

However, Imam Shafi'i says that the intention should be made before the obligatory fast begins. The Shafi'i's mention that making the intention of that which has been ordered is necessary – since every action is by its intention. Therefore, one should make an intention before he does the obligatory command of fasting.

Part Two: *Dalalat an-nas'*

Example one:

Allah says in the Qur'an, *"And your Lord has decreed that you not worship except Him,* ***and to parents, good treatment. Whether one or both of them reach old age [while] with you, say not to them [so much as], "uff,"*** *and do not repel them but speak to them a noble word"* (Surah Al-Isra, ayah 23). Here, it is obvious that the word *uff* does not refer merely to the word *'uff'*, as it would literally suggest. Someone who knows the Arabic language will know that the word *uff* is used here as a reference to the things that may harm or offend one's parents. He will understand this impossibility of literalism from the first time of hearing, without the need to derive this understanding through *ijtihad*. The ruling of this is general, due to the generalness of the *nas'* – so where you will hurt your parents – that will be *haram*. This command in not harming one's parents is so strong,

that even taking a parent to court for an owed payment, or as revenge for murdering his own son is not allowed by another son.

Imam Abu Yusuf says, because *dalalat an-nas'* is based on the *illah* (cause) - which is based on its customary meaning, if a group of people considered one asking his mother to make him food as not being disrespectful, then that will not be considered *haram*. Therefore, *'urf* plays a role in determining what is allowed, as local culture dictates what is considered respectful and disrespectful.

Example two:

Allah says in the Qur'an, *"O you who have believed,* ***when (the adhan) is called*** *for the prayer on the day of Jumu'ah (Friday), then proceed to the remembrance of Allah and* ***leave trade (bay')****. That is better for you, if you only knew"* (Surah Al-Jumu'ah, ayah 9). The *illah* (cause) here is that if you do not stop your *bay'*, you will miss the *Jumu'ah*. However, if we assume the *bay'* will not stop the buyer and seller in going to *Jumu'ah* (for example, they are in a ship that is going to the masjid), then the *bay'* will not be *makruh* - as the *illah* (cause) itself is non-existent.

Example three:

If somebody were to make an oath that he will not hit X, and then he hit him after he has passed away, the oath will not break - as the *illah* (cause) of hitting (to cause pain) is now non-existent. Likewise, if somebody were to make an oath that he will not speak to X, and then spoke to him after his passing – the oath will not be broken, as the cause for speaking is for the other person is to 'understand'.

Example four:

If somebody were to make an oath that he will not hit his wife (*"la yadribu"*), and then pulled her hair – his oath will still break. This is because the words *"la yadribu"* were used to indicate pain, and not the literal meaning of merely hitting. However, if he were to pull her hair without the intention of causing pain, then the oath will not break.

Example five:

If somebody were to make an oath that he will not eat meat, the oath will not break if he were to then eat the meat of fish or locusts. However, if he ate the meat of a pig or even a human – it will break his oath, despite both being *haram*. This is because *lahm* (meat) is defined as that meat which has a circulation of blood within it, and the person who made the oath wanted to refrain from this blood – and therefore, everything outside of this definition will not affect the oath.

***Dalalat an-nas'* can be used as evidence for expiation**

Rule: *Dalalat an-nas'* is understood as being clear (like *ibaarat an-nas'*), and therefore valid in establishing punishments such as *kaffarah* (expiations), which would not have been possible through a vague text.

For example, in a hadith (Muwatta, 18), it is narrated that a Bedouin who had engaged in intercourse whilst fasting, had come to the Prophet (SAW) in order to seek expiation for his crime. Thus, he was ordered to free a slave, or fast sixty days, or give in charity. Although this hadith only mentions intercourse, the scholars have derived the same expiations if one is to break their fast through other means (such as eating and/or drinking). Here, intercourse is the *ibaarat an nas'*, whilst the *dalalat an-nas'* is for the other acts which nullify the fast – and will have the same *hukm* (ruling).

Part Three: *Iqtidaa an-nas'*

Example one:

A nikah is made up of an offer, and an acceptance. However, in other transactions, such as in a supermarket today – you pay the price mentioned. This is 'assumed' as an offer on their part, and an acceptance on your part. These things are hidden, and we have to assume these in order for the transaction to make sense, otherwise the contract will not be valid.

Unless you assume the *iqtidaa* to be there, the *nas'* will not make sense in these situations. It is as though the *nas'* demands the hidden *iqtidaa*, in order for it to make sense.

Example two:

A husband wishes to divorce his wife, and utters, *"anti taaliqun"*. However, the word *taaliqun* is a descriptive word, telling her that she is a divorcee. If understood literally, this is not giving her a *talaq*, but just describing her. Due to this, this describing word demands a *masdar* (root), and it needs to be found from hidden within it in order to give it a meaning that makes sense. Therefore, the root *masdar* will change the meaning from *taaliqun* (divorcee) to *talaaqan* (divorced).

Example three:

A man says to another man, *"Free your slave on behalf of me, in exchange for one-thousand dirhams".* The other man replies, *"a'taqtu (I have freed him)"*. Here, the act of freeing will be on behalf of the person who initiated the command, and the payment of one-thousand *dirhams* will become *wajib* upon him.

On this occasion, the *bay'* will be established through *iqtidaa*, as it was assumed that the first person has told the other to act as his agent in order to free the slave in exchange for one-thousand *dirhams* – even though this was not categorically mentioned. In this way, acceptance is established from the part of the second person. Therefore, both the offer and acceptance is being done through the assumed words spoken by both parties.

Imam Abu Yusuf has said based on this, that if somebody was to say, *"Free this slave on my behalf, without any payment"* – you are basically saying, *"Gift him to me, and then free him on my behalf as my agent"*. In this case, if the other person replied, *"a'taqtu"* – the freeing will be established on behalf of the first person, and this sentence will act as a hidden approval for agency. Therefore, this transaction is fully permissible.

Imam Abu Yusuf furthers adds that the first person does not have to take the slave into his possession (*qabd*) before he is sold, and it is acceptable for his agent to take all responsibility. However, the other Hanafis say that *qabd* (taking into possession) is a pillar (*rukn*) in the rules of *bay'*, and because this offer was established through assumption – we must also assume and establish possession (*qabd*) by necessity, due to it being a requirement in *bay'*.

Therefore, the Hanafis say that the slave has to come into the possession (*qabd*) of the first person, and then given back to the agent if any payment is promised, but not necessary if it is a gift (as *qabd* is not of pillar of gifting). Whilst Imam Abu Yusuf says that the slave does not need to change possession (*qabd*) in between the transaction - for either payment or through gifting.

Rule: Only the *dharura* (minimum necessity) is established through *iqtidaa an-nas'*, and not more than that.

Example one:

Because of this, if a husband says *"anti taaliqun"* to his wife, and makes an intention of 'three *talaqs'* – because it is *iqtidaa an-nas'* and we have to bring its meaning through its *masdar*, only the *dharura* is established, and therefore the minimum of 'one *talaq*' would occur.

Example two:

Another example is of a man who says to his wife, *"If I eat (akaltu), you are divorced"* whilst making an intention of particular foods only. Here, the word *akala* has a hidden sentence *ta'aam* (meaning *'in akaltu ta'aaman*), and therefore *iqtidaa an-nas'* is used, and only the minimum is established. Therefore, even if he ate a little bit of food, his wife will be divorced. This is not an example of *takhsees* (specification) by specifying the food through an intention – as the *takhsees* is not assumed. For it to be a *takhsees*, it would have required it to be

made in an *'aam* word, but the word *ta'aam* was not even uttered, and only understood through assumption. In this regard, if he did happen to say, *"in akaltu ta'aaman"* – then, it could be understood as a case for *takhsees*.

Example three:

If a man says to his wife, *"Observe the iddah (i'taddee)"*, and makes the intention of *talaq*, this will mean that a *talaq* will occur. The word *i'taddee* can mean many things as it merely means 'count' (such as the blessings of Allah etc.) – but because of his intentions, we will assume a reference to her three *haid* cycles. This will make the occurrence of the divorce necessary, but it will be a *talaq raj'ee* rather than a *talaq ba'in* – as only the minimum will occur through the *iqtidaa an-nas'*, and only one *talaq* will occur.

Section Ten:
Amr (Commands)

The literal understanding of *amr* is when a person says to another person, *"Do (if'al)"*, and therefore making it necessary for the other person to carry out that command. For example, a teacher may command a student to give him a book – and therefore the 'giving of the book' has become necessary on the student. The command that had created this necessity is called an *amr*.

What some scholars have said regarding *fi'l amr* (an imperative/commanding verb):

Some scholars have mentioned that the intended meaning of a *fi'l amr* is that it becomes *wajib* on the other person to carry out that command. And therefore, if you want to make something *wajib* on someone, then it has to be done regarding the specific command pattern from the *fi'l 'amr* inflections.

Rebuttals of the above views

1) It is far-fetched (*mahaal*), that making something *wajib* can only be through a *amr* command. This is an incorrect viewpoint, as Allah is and was a *Mutakallim* (One who speaks) before the creation of this world. And therefore, for Allah – there is no such thing as an *'amr command'*. Specifications of the Arabic language into categories such as *amr* (command), *nahy* (prohibition), *madi* (past tense), *mudari* (present and future tense) etc. are a mere 'creation' - only for the sake of learning the language.

It is impossible for these inflections to have existed before the heavens and the earth, and nothing but a mere recent creation. Therefore, the rules of etymology do not apply to Allah, as He gave everything as a command. An example of a non-*amr* command is when Allah says, *"O you who have believed, **decreed upon you is fasting (kutiba 'alaykumus siyaam)** as it was decreed upon those before you that you may become righteous"* (Surah Al-Baqarah, ayah 183). Here, the word *kutiba* is used, and it is not in the form of a *fi'l amr*.

2) The intention behind using a *fi'l amr* is for things to become necessary, and the reasons why we have *amr* commands from Allah is because He wants to test us. But sometimes Allah may test us without the use of an *amr*, and may still make that thing *wajib* opon us. For example, one who lives in a remote place where no *da'wah* has reached – it is still *wajib* on him to believe in Allah. This person will not have come across the Qur'an (and its commands), but his innate *fitrah* will still make it an obligation to believe in Allah. In fact, it is a *fard* in this case.

Imam Abu Hanifah says, *"If Allah did not send a messenger of knowledge (da'ees, scholars etc.) to a place, it is an obligation to those people to believe in Allah through their pondering and their logic"*.

Those scholars who say that only the inflections of *amr* can make something *wajib*, they also say that this is only related to Islamic rulings (such as beliefs, and jurisprudence). They also say that the Prophet (SAW)'s actions are not the same as his *amr* commands (through his literal speech), and therefore it will not be *wajib* to do the actions of the Prophet (SAW) if he did not literally command it. Because of this, they say that our *aqeedah* should not hold the belief that it is *wajib* either. However, if he did command it literally through an *amr*, it will be *wajib*.

Naturally, one may ask how far we should follow the Prophet (SAW)'s *sunnah* when it is not *wajib* to copy his actions, and why we make it such a big deal? Here, the scholars say that we should always try and do an action if it was something he did habitually, and if there is no evidence of that thing being made specific (*khass*) to him (such as having more than four wives at once). However, they will not be obligations (*fard*) on us.

Section Eleven: *Amr Mutlaq* (A command without a mention of its necessity)

An *amr mutlaq* is that which is empty of evidence of whether it is necessary to do or not, and scholars have differed in their approach to these.

Example one:

Allah says, *"So when the Qur'an is recited, then listen to it and pay attention that you may receive mercy"* (Surah Al-A'raf, ayah 204). Here there are two commands; listen to it and pay attention. However, are these obligations or just things that is desirable?

Example two:

Allah says, *"And We said, 'O Adam, dwell, you and your wife, in Paradise and eat therefrom in (ease and) abundance from wherever you will. But do not approach this tree, lest you be among the wrongdoers'"* (Surah Al-Baqarah, ayah 35). Was this command by Allah (AS) a ruling or a warning?

All *fi'l amr* give meaning of it being *wajib* to act upon, unless there is evidence that supports the opposite – so that you know that it is not an obligation. Without this evidence for the opposite, it is an obligation. This is because the 'leaving out' of a command is a sin, just as 'fulfilling a command' from Allah or the Prophet (SAW) is an act of obedience.

Importance of acting upon a command

If somebody obeyed you, naturally you will obey him, and vice versa. This is a natural habit in social phycology, and the basis in which friendships develop. To disobey that which connects to the rights of the *shari'ah* is therefore a *sabab* (cause) for punishment. Acting upon a command depends upon how much control one has over the other, and therefore, following Allah's commands are very much obligatory upon by His slaves.

It is for this reason that when you direct a command of *amr* to a person whom you have no authority over, it will not be *wajib* for him to abide by it. Similarly, if you give a command to someone who is supposed to be under your rule, they will have to abide by your command (i.e. employee, child etc.) – to the extent that if he were to leave it out, then he will be worthy of punishment, both through custom as well as Islamically.

When we establish that fulfilling an *amr* is based on the power of the commander – indeed Allah is the Lord of all the worlds. If His slave then omits a command, he is worthy of punishment. So what will you say to abandoning the command of the One who brought you into being from nothing, and rains down upon you different types of blessings? He has full ownership over us, whilst the one who has a partial ownership of us even requires to you fulfil his command.

Section Twelve:
Muqtada Al-Amr
(A command that does not give a meaning of repetition)

This command does not give the meaning of repetition, and is therefore fulfilled upon its initial completion.

Example one:

A husband says to his *wakil* (agent), *"Divorce my wife"*, and upon this, the *wakil* then divorced his wife on his behalf. Then the person who made him the *wakil* (the initial husband) remarries her – here it is not permissible for the *wakil* to give her a divorce the second time, based on the first command.

Example two:

A man says to his *wakil*, *"Get me married to so and so"*. This command will not command another marriage after the initial marriage has taken place. After the initial marriage has happened, the command has come to an end.

The establishment of the minimum (*fard haqiqi*) and the maximum (*fard hukmi*)

A *fi'l amr* is a concise way to say a whole sentence, and thus establish the command of an action in a concise way. Whether you shorten or lengthen the sentence, they are both the same in the ruling that they give.

An *amr* (such as *'idrib'* – 'you hit') is an *ism al-jins* (it has a lot of variations in its meanings), as 'hitting' can be understood in many ways. Similarly, the word *talaq* is an *ism al-jins*, and can means either one, two or three *talaqs*. So, where there is no intention in an *ism al-jins* - the minimum is always established (*fard haqiqi*), and where there is an intention of the maximum, then the maximum (*fard hukmi*) is established.

Example one:

For example, if a husband says to his wife, *"Divorce yourself"*, and she replies, *"I have divorced myself"* – automatically one *talaq* is established, unless he intended three *talaqs* (then it will be three). To add to this, if he had made an intention for two *talaqs*, this intention would not be correct (as it is either the minimum or the maximum), unless she happens to be a slave girl – as the utterance of two *talaqs* with a slave girl is sufficient for a complete divorce.

Example two:

When a master says to his servant, *"You may marry"*, this will not be for more than one marriage, but just the one marriage. However, if he had made an intention for two marriages – then this is valid as it is the complete *jins* (complete meaning) regarding a slave (as a slave is allowed to have two wives).

Example three:

If somebody made an oath that he will never drink water, the minimum water needed for him to drink in order to break the oath is just one drop of water (*fard haqiqi),* and the maximum (*fard hukmi*) is the sum of all of the water in the world. If he made the intention of the minimum, the drinking of just one drop of water will break his oath. But if he made the intention for the maximum, one drop will not break it – as to drink all of the water in the world is impossible.

Issues raised regarding the repetition of Allah's commands

Some may argue and say that if an *amr* only requires for that action to be carried out once – how does that relate to Allah's commands in the Qur'an. For example, Allahs says, *"And establish prayer (wa* ***aqeemus salaah****)..."* (Surah Al-Baqarah, ayah 43) – can we just pray one *salaah* in order for it to be sufficient? Why do we have to repeat the *salaah* if there is no repetition in a *fi'l amr*?

Here, the ruling for an *amr* being repeated is because this action was not established through the *amr* itself, but through the repetition of the *asbab* (causes) through which it has been commanded. Therefore, we are not doing these actions because of the *amr* command, but because the timings (*awqat*) of *salaah* and their causes, and therefore the repetition of these timings cause us to continuously pray in accordance to it.

So now, one may ask – why is there a command if the cause (*asbab*) necessitates it? This is because the *amr* is mentioned by Allah as a reminder to us of our obligations as Muslims. Therefore, it is not there to make it an obligation for us, as the causes (*asbab*) are already doing that. Below are two examples of how a *sabab* can cause something to become an obligation, whilst the *amr* is just a reminder for it:

Example one:

A buyer may say to a seller, *"I will pay you for an object at a later time"* – and then the seller later apprehends him asking him for the value of the item before it has been paid for. Here, the *fi'l amr* (asking for the payment) is referring to a cause (*asbab*) that had happened earlier (the cause being the taking of the item).

Example two:

A wife may take her husband to court, because he has not taken care of his duties. In this situation, the complaint of the wife is the *amr*, whilst its cause is the marriage – during which he took on the obligations that he failed to meet.

Note: Because an *amr* contains a *jins* (minimum and maximum), it includes everything that can be possibly established by it. So, when Allah reminds you for *salaah* – it may just refer to a minimum of one *salaah*, but it also contains within it the maximum of every *salaah* in your lifetime. For example, its mention by Allah makes *dhuhr salaah* an obligation during *dhuhr* time, but the command is forwarded again to the following day when the time comes back round to the *dhuhr* period.

Section Thirteen:
Al-Ma'moor bihi (That which is being commanded)

That which has been commanded is of two types:

1) ***Mutlaq an al-waqt:*** Those commands and orders from Allah where there is no specific time given in order to complete it (such as *zakaah* etc.).

2) ***Muqayyad bihi (muwaqqat):*** Those commands where a specific time has been allocated for it, although it does not always require the entire duration to be spent in doing it.

Part One: *Mutlaq* (No specific time has been given)

With the command of a *mutlaq*, it is an obligation for one to complete it, although it is permissible to complete it with delay. This is on the condition that it is not missed during one's lifetime. For example, you may give *zakaah* whenever you wish within its accepted period.

Imam Muhammad mentioned in his *Jaami'* that if one were to make a vow that he will reside in *i'tikaaf* for a month, he can take part in *i'tikaaf* whenever he wants. This is because this vow is one that is *mutlaq* and is therefore not restricted to a specific time. Similarly, if he made a vow to do an optional fast – he may fast in whichever month he wishes, and the same with *zakaah*, and *'ushr* (1/10th of the produce of the land). For *zakaah* or *sadaqah*, he will not be sinful if he delayed any of these, as they do not have to be fulfilled immediately.

However, if the *nisaab* (threshold) of paying *zakaah* goes, then the *zakaah* will not be an obligation on that person. However, this is only if you lost your *nisaab* threshold due to something that was not your own doing (such as a result of a natural disaster etc.). To add to this, if a person makes an oath and then breaks it, he has to pay its expiation (either by freeing a slave, or by feeding ten poor people, or by clothing ten poor people, or by fasting three days). But if his wealth goes, he can only afford to fast, and so in this situation he will give the *kaffarah* (expiation) of *sawm* only – and he does not have a time limit for completing this.

However, although a *mutlaq* command can be performed whenever, the Hanafis have said that performing a *qada salaah* is not allowed doing the forbidden (*naqis*) times of *salaah*. The Hanafis argue that it demands for it to be done within its lawful (*kamil*) time, as one has to take the responsibility in completing it properly – because you have your entire life to do it, and therefore you have no rush in doing it in its forbidden time. Therefore, performing it during the forbidden time will not absolve one's responsibility towards it, and it will not be considered as a fulfilment of the *qada salaah*.

To add to this, if one prayed his *asr salaah* ten minutes before *maghrib*, he has made it *makruh* upon himself and is therefore praying in a *makruh* way. However, if he missed it completely – he will not be able to perform it the following day in the same period, as he has the obligation to perform it in a complete manner.

Note: Imam Al-Karkhee is of the opinion that the consequences of an *amr mutlaq* is that it is *wajib* straight away. This is the only difference in this between the majority of the Hanafi scholars and Imam Al-Karkhee, and there is no *ikhtilaaf* towards hastening towards completing it between both parties.

Part Two:
Muqayyad bihi/muwaqqat (A specific time has been given)

This is where something has to be completed within its specified time period, and these are of two types:

1) The entire specified time does not have to be spent in performing it

In this category, you do not have to spend the entire time involved in that particular action, to the extent that the entire time spent doing the action is not a condition (such as with *salaah*). The ruling of this category is that the obligation of this action does not negate the performance of another action of a similar *jins* (nature). For example, you have to pray *dhuhr* in the *dhuhr* period, and this can be performed as quickly as you want, without having to use the entire period. If you also wanted to pray any *qada* or *nafl salaah* within this period – it will also be allowed. Because of this, if one spent the entire period with a *salaah* other than *dhuhr*, those other *salaahs* will still be accepted – although there will be a sin for not performing the *dhuhr*. For a *ma'moor bihi*, one still has to make a *niyyah* (intention), as you are able to pray other prayers within that particular time, and by doing just the actions of a prayer does not necessarily suggest any specific prayer. Therefore, by specifying it with an intention, it allows for any confusion to be avoided.

2) The entire specified time is used for that particular worship

In this category, you have to spend the entire time involved in that particular action. An example of this is *sawm* – as the entire time is spent for fasting, and it is calculated by its due time. Its ruling is that the lawmaker (Allah) has specified for it a particular time (Ramadan), and therefore, other fasts will not be allowed during that particular time (whether *nafl* or *wajib*). This is because Allah has clearly said, *"The month of Ramadan (is that) in which was revealed the Qur'an, a guidance for the people and clear proofs of guidance and criterion.* ***So whoever sights (the new moon of) the month, let him fast it.****."* (Surah Al-Baqarah, ayah 185). To add to this, if a person was to refrain in Ramadan on behalf of another

wajib – his Ramadan fast will be accepted, and not what he had intended it for. And because there is no doubt in which fast it is, if someone just made an intention of fasting during Ramadan, he does not have to specify it as being a 'Ramadan fast'. However, one may ask why you would still need an intention if we know it is Ramadan? This is because *sawm* requires 'refraining' – and therefore it makes it imperative to have an intention for it.

Rule: If the *shari'ah* has not specified a time for an action, then it will not become specified by the specifying of the servant. For example, Allah has not specified a time for us to perform *qada salaah*, and because of this, we will not be able to specify it. Therefore, if one changes his mind on his initial intention of when he wanted to make up his *qada salaah*, that would be valid. The specification of the *niyyah* is a condition for something that you have specified on yourself, in order to avoid confusion with other fasts that may be captured within that particular fasting period.

It is permissible for a servant to make things *wajib* upon himself, whether that thing is a *muwaqqat* or a *ghair muwaqqat* – such as an intention of fasting for ten days, or to give *sadaqah* etc. However, it is not allowed for him to change the rulings of the *shari'ah* – so he cannot make the *mutlaq* into a *muqayyad*. For example, if one made an oath that he will fast on a specific day – it is now necessary upon him to fast on that specific day. If he was to fast a Ramadan *qada* fast or a *kaffara* fast for breaking an oath, that would be permissible and allowed as the *shari'ah* has made the *qada* a *mutlaq*, and it is not permissible for the servant to make it restricted – so he can then change his mind on what the fast is for.

Objection

If someone made a vow to keep a *nafl* fast on Monday, and he does – it is fine. If however, he changed his mind on the day to make it into a *qada* fast, then that will be accepted instead of the *nafl* fast. So why is it that the opposite is not allowed? Why would the vow of the *qada* be accepted in this case? This is because he has the full choice in leaving out the *nafl* or going ahead with it – and this is in his own right. However, something that is within one's right is always taken over by that which is the right of the *shari'ah*. This vow is attached to the right of Allah, whereas the *nafl* is just your own right. Where there is a clash of rights – the rights of the *shari'ah* is given preference over the optional right.

Based on this, the Hanafi scholars have said that if a husband and wife have both made a condition that during *khula* (divorce request of the wife), there will be no maintenance or accommodation – the obligation the husband had on his wife for maintenance will be annulled, but not the accommodation. This is because the accommodation is the right of the *shari'ah*, whereas the maintenance is the right of the wife. This is exercised to the extent that the husband will not be able to remove the wife from the house where the *iddah* is being seen out, as that is her right.

Section Fourteen:
Husnil Ma'moor bihi
(The good in that which is being commanded)

The *ma'moor bihi* (that which is being commanded) can sometimes be good, and sometimes be bad, and this depends on who it is that is commanding it. The goodness of an *amr* can be indicated if the commander is someone of a pious nature. A command is something that needs acting upon, and therefore a command from a pious person will naturally indicate that the command must also be good.

That which a person is commanded to do, in terms of its goodness is of two categories:

1) *Hasan bi-nafsihi:* Where the goodness of the command is inherent in itself.

2) *Hasan li-ghairihi:* It may not be good inherently, but it is good due to a justifiable reason.

Part One: *Hasan bi-nafsihi* (Inherently good)

Hasan bi-nafsihi refers to a command where the goodness of the command is inherent in itself. For example, the command to believe in Allah, to be thankful to Allah for bestowing blessings upon you, to speak the truth, to pray *nafl salaah*.

Rule: The ruling of this particular category is that when it is *wajib* upon the servant to complete it, then it will not be cancelled unless he actually does it. For example, to believe in Allah will never be abrogated, and therefore it will not be fulfilled until one believes in Allah.

As for a command that has the possibility of being cancelled, it will be cancelled either through doing the action or through the cancellation of the commander (i.e. *salaah* can be cancelled if one is on her monthly period). Based on this, the Hanafis say that when *salaah* becomes obligatory at the beginning time, the obligation of *salaah* is cancelled either through performing it or through the occurrence of *haid* or insanity etc. So even if a woman was able to pray at the beginning time of *salaah*, and the *haid* started before she could pray it – she is still forgiven for it. The obligation of *salaah* will not be annulled because of lack of time, water, or clothing.

Part Two: *Hasan li-ghairihi* (Good due to a justifiable reason)

Hasan li-ghairihi refers to a command that may not be good inherently, but it is good due to a justifiable reason. For example, walking to the *jumu'ah* prayer – the walking itself may not be pleasant as it may be cold, but the *jumu'ah* is the ultimate goal. Similarly with performing *wudhu*, it may not be pleasant in itself, but it is the key to *salaah* - and the action of *salaah* would not be valid if that key had not been established. Therefore, for the one upon whom an action is not *wajib*, the means to it will also not be a *wajib*. Therefore *wudhu* is not an obligation on the one on whom *salaah* is not *wajib*.

To add to this, if someone was 'hastening' towards the *jumu'ah* prayer, and then he was carried forcefully to another place before he could establish the *jumu'ah*, then it is obligatory for him to hasten towards it a second time. However, if he is doing *i'tikaaf* in a *jam'i* masjid, then the act of 'hastening' will be annulled for him. Similarly, if he performed *wudhu*, and then he breaks his *wudhu* before the performance of *salaah*, the *wudhu* will become *wajib* upon him the second time. However, if he desired to perform *wudhu* at the time of *salaah*, it is not necessary for him to repeat the *wudhu* if he is already in a state of purity.

Examples of *hasan li-ghairi* that may not be good inherently, but that have a benefit as a result

- *Hudood* – It is a deterrent of crimes (such as drinking, theft, adultery, slander etc.).
- *Jihad* – It stops the evil of *kufr*, and preserves the *Kalimah*.
- *Qisas* – Allows equal retribution for crimes in order to command equal justice between parties.

If there were no evil or crime – there will be no need to implement these punishments.

Section Fifteen:
Al-Ada wa Al-Qada
(Acting upon a command exactly as commanded, or acting upon it with a deficiency)

There are two ways in which one could fulfil a command:

1) ***Ada:*** Here, the act is 'handed over' in the way in which it was made obligatory, to the one who had commanded it.

2) ***Qada:*** To 'hand over' the action in a way in which it was not commanded by the commander.

Part One: *Ada* (Acting upon a command, exactly as commanded)

Ada is of two types:

1) ***Ada kaamil*** **(complete):** For example; praying *salaah* during its instructed time, with the congregation.

2) ***Ada qaasir*** **(incomplete):** For example, praying during its instructed times, by one's self, or doing *tawaaf* without *wudhu*.

Section One: *Ada kaamil* (complete *ada*)

Example one:

During the sale of an item, when the seller hands over an item to the buyer, he has to make sure that the item is given without any defect. Handing over the item properly and efficiently is the service the transaction demanded to the customer.

Example two:

If a snatcher forcefully snatches someone's mobile phone, the rule is that he must return it back to the one whom he had snatched it from, and in the condition in which he had snatched it. He will be free from the *ada* when he has completed this responsibility.

Based on this, we say that if the snatcher sells the mobile phone back to the owner, or he gives it to him as pawn – he will be free of his responsibility. However, what he had uttered regarding the sale or the pawning will be rendered meaningless – and the original owner will be given full ownership.

Similarly, if he snatched some food and then gave it back to the owner to eat it, and the owner does not know that it is his – by doing this action, it will be considered as a completion of *ada*. Therefore, to call it a 'gift' will make that statement invalid.

Example three:

If a customer bought an item in exchange for a *haram* item, he will have to return the item back, so that he can do the transaction again. If he then gave it back to the seller as a pawn, or as a gift, or even for sale – it will be considered *ada*, and the transactions involved in the return of the item (be it sale, pawn, gift) – these words will be nullified, as the item has to be returned back to the original seller.

Section Two: *Ada qaasir* (incomplete *ada*)

This is when you 'hand over' an action that you had been commanded to do, but with deficiencies, and not in the manner in which it could have been 'handed over'.

Rule: The *hukm* (ruling) of this particular category (*ada qaasir*) is that if it is possible to rectify the deficiency by giving back something similar or a replica as compensation, then it will be given and permissible. Otherwise, the *hukm* is that you will gain the sin for that action.

Example one:

When one prays *salaah* with *khushu* and humility, and in its correct time, by one's self. Although it is good, the full reward of performing in *jama'ah* is being missed. It may be *ada*, but in a *qaasir* form.

Based on the *hukm* mentioned, when someone leaves out being *khushu* in *salaah* – it will not be possible to replicate it as the *salaah* is finished, and therefore this particular requirement will be annulled although the *salaah* is accepted, but you will still receive the relevant sin for rushing it.

Also, If someone was to miss their *salaah* during the days of *tashreek* (from *fajr* of 9th *Dhul Hijjah* to *'asr* of 13th *Dhul Hijjah*), and then did *qada* of it in days other than the days of *tashreek* – he will leave out the *takbeers*, as there is no replica of saying *takbeer* outside of its specified days.

To add to this, if somebody left out the reading of Surah Al-Fatihah, or the *qunoot*, or the *tashahhud* when reading *salaah* - it can be rectified by performing a *sajdah sahwa*, as those elements are *wajib* according to the Hanafis. Here, since there is a way to rectify it, the performance of the *sajdah sahwa* will annul any requirement to redo the *salaah*.

Example two:

If one performs *tawaaf* without being in a state of *wudhu* - although the *tawaaf* will be complete and *ada*, it will be insufficient and *qaasir*. However, this can be rectified by performing a sacrifice.

Example three:

If a seller gives an item to a customer with a defect that the buyer has not seen, the transaction will be *ada* but *qaasir*, and now up to the buyer if he wants the transaction to remain, or to give it back. However, if one pays for a slave, and the slave commits a crime before he is presented to him, the buyer has to now take charge of anything that the slave has incurred, as the ownership of the slave has been transferred to him before he became *qaasir*.

Example four:

If a snatcher returns a slave back to his owner in order to fulfil his *ada*, but the slave had incurred debts whilst in the ownership of the snatcher, the costs will be incurred on to the original owner. This is an example of a return of a slave which is *ada*, yet *qaasir* due to the deficiency in his return.

If the snatcher handed back a slave who had killed someone to the original owner, if the slave now died naturally after being handed over, the snatcher has no penalty to pay. If someone else bought him, and the slave died before he received him, the cost will still be due on the new buyer - as he was now his item. If however, the slave died as punishment for his crime – the snatcher will have to pay full compensation to the buyer who will return it to the original seller.

Similarly, if a female slave girl who is stolen falls pregnant because of intercourse with her abductor, and she then passes away during childbirth – according to Imam Abu Hanifah, the abductor would have to pay compensation to her owner.

Example five:

If non-100% gold coins have been returned back to a person instead of 100% gold coins that were initially borrowed, and the lender is not aware of this, it will be not be considered as *ada kaamil*, but *ada qaasir*. When it comes to coins specifically, it is not stipulated for one to return the exact same coins, and therefore - although it was not 100% gold, it is still considered a proper transaction.

Based on this, if somebody gave non-100% gold coins in exchange for those of good quality which had been lent to him earlier, and then the non-100% version perished in the possession of the one who had taken it – there is nothing due to

the one who gave it to him, according to Imam Abu Hanifah. This is because the one in debt had given back what he had owed.

Note: In this section, we see that *ada kaamil* is the complete way to perform a command, and we should always strive to do it in that manner. We should only perform a command as an *ada qaamis* when we cannot do the *ada kaamil*. However, it is still an *ada* whether it is *kaamil* or *qaamis*, and you will only go towards *qada* if you are unable to do the *ada*.

Because of this reason, *maal* (wealth) has become specified when it comes to trust (*amanat*) or agency or *ghasab* (snatching). Therefore, when an agent or a snatcher decides to return what is in their possession, that exact *maal* will have to be given back (except for coins - these cannot be specified due to their similar nature). If the agent or snatcher returned something that is similar to the original item, then that is not permissible for him to do.

Imam Shafi'i's views vs. Imam Abu Hanifah's views on snatched items that develop a defect

Wherever it is possible to return an owed item, you have to return the item back to its owner – and based on this, it is obligatory and *wajib*. According to Imam Shafi'i, it has to be returned back - even if there is a drastic change in the item since it had been snatched, along with a compensation for the defect. However, according to Imam Abu Hanifah – in this situation, the snatcher will become the owner of the item and he will have to give compensation to the original owner as a result. For example, if somebody stole some wheat and grinded it into flour, or he snatched the beams for a building and made a building for it, or he snatched a sheep and then cooked it, or he snatched some grapes and made it into grape juice, or he snatched a seed and grew some crops.

However, if somebody had snatched some silver or gold and made them into coins, or he snatched a goat and then slaughtered it, or he snatched some cotton and spun it into clothes – the right of the owner will not be cancelled in this situation, and therefore the original owner will still be the owner – according to both Imams, as these are not classed as drastic changes.

From this, the compensation ruling can be derived. The rule for snatching is that when you snatch – you will have to give compensation for it, if it has perished. If a snatched slave came back after the owner had taken compensation from the snatcher – the servant will remain in the ownership of the original owner, and it will be obligatory on the owner to give what has been taken as value for the slave. But based on the principle mentioned earlier, according to the Hanafis - the snatcher will keep the slave and the original owner will keep the compensation that he took, as it had become a transaction when the compensation was paid. However, a criticism of this Hanafi principle is that people could use this to snatch someone's item and then pay a compensation for

its value, only for the item to reappear. However, actions are based only by intention – and there is sin for this.

Part Two: *Qada* (Acting upon a command with a deficiency)

Similar to the *ada* category, there are two types of *qada*:

1) *Qada kaamil* (complete): To perform a command by 'handing over' something similar to the command in terms of the way it looks, and its meanings. For example, if someone had stolen a kilogram of wheat, he will now be responsible for a kilogram of wheat. However, this will not be the exact same wheat, but a replica of what had perished, in both value and looks. This is the **rule** for all items that are similar in nature. Similarly, in *qada salaah*, we try to give a replica – so it is *qada kaamil*.

2) *Qada qaasir* (incomplete): To 'hand over' something that is not similar to the obligation in looks or meaning, but similar in value. For example, the one who snatched an animal (for which there is no exact replica) and then slaughtered it; he will have to pay a compensation for its value in money according to what it is worth.

Rule: Based on this principle, Imam Abu Hanifah has said that when one has snatched an item in which an exact replica can be given (such as wheat, barley, dates) – he has to give a compensation of the exact replica. However, if that replica has now seized trading and not available, he has to give its monetary value, based on the value of the item on the day when the case is to be judged by the *Qadi*, and not the day of the snatching. The inability in handing over the replica is only apparent on the day of the case, as the period up until the case could be spent in order to seek the replica.

As for those things that do not have a replica, either through its appearance or its value – in these situations, it is not permissible to give a replica, and the snatcher will be sinful.

For example, the Hanafis have said that if the benefit of a lease is abused, this cannot be replicated. Where you use a lease, you cannot give a compensation for it, and to make it *wajib* is also difficult – since it does not have a replica.
It is similar to when somebody has snatched a slave, and he has taken *khidmah* from this slave for a month, or he has snatched somebody's house and has lived within it for a month – and then he returns the snatched item to the original owner. These cannot be replicated, as slaves and houses are different to each other, and therefore the service given in return will never be fully replicated. To add to this, the money also cannot be replicated, since *khidmah* cannot have a price put on it accurately. Therefore, there will be no compensation, and nothing will happen. There is no difference of opinion in this, except for the view of Imam

Shafi'i. He is of the opinion that compensation must be given – and this is calculated upon the rules of leasing. Through this, he will calculate it based upon the renting of a similar slave or house.

Based on this, the Hanafis have given a further scenario: If one were to give false testimony in a divorce court which led to a husband being divorced from his wife temporarily – there will be no compensation for him. He cannot ask for the benefit from the wives of the witnesses, or any money to compensate for his lack of relations during the divorce period – as there is no monetary value for intercourse. Similarly, if someone was to kill his wife, or commit *zina* his wife – there is no compensation for it, even though there will be a death penalty for the murder.

Rule: This is the same for every similar case unless the *shari'ah* has revealed a replica – even if the *shari'i* replica does not logically replicate the original matter, either in appearance or monetary value. We accept it purely because the *shari'ah* has ordained it. For example, an old person has to give *fidya* for each fast that he cannot keep. Also, to give one hundred camels or its value for manslaughter – even though there is no relation between the two.

Section Sixteen:
An-Nahy (Prohibitions)

An-Nahy (prohibitions) is of two types:

1) *An-Nahy 'an al-af'al al-hissiyya*: This refers to those things which are inherently considered to be bad, wrong and unlawful in all time periods, such as adultery, drinking alcohol, lying, oppression etc.

2) *An-Nahy 'an al-tasarrufaat al-shari'yyah*: This refers to matters that are prohibited from a *shari'i* point of view, even though they are not bad from a logical point of view, such as fasting on the 10th of *Dhul Hijjah*, praying during the unlawful times, and selling a *dirham* for two *dirhams* (*riba*) etc.

Rule: The *hukm* of the first category is that since it is inherently bad, it can never be accepted. The *hukm* of the second category is that the thing that has been prohibited has been prohibited for other reasons, and therefore even though it is possible to be good in itself, it is bad based on the reason for its prohibition.

Regarding the one who does an action from the second category, he is guilty of doing *haram*. Not because of the actual action, but of the reason why it was prohibited in the first place. However, the Hanafi scholars have said that the consequences of his actions will still apply, even though the rule of prohibition is established. Therefore, even though the prohibition is there, if somebody did do that action – it will be done, but it will be sinful. So, even though you may pray during the *haram* time, the *salaah* will be done – but it will be *haram*.

But one may ask why it is still doable if it is *haram*?

It is only there to explain what will happen if it did take place in the prohibited way, otherwise – it would seem as though that action will be *haram* in itself. It would be as though one is telling a blind person not to look – it would have been a prohibition to an incapable person, and something that is impossible from the *shari'ah*. In this way, we can differentiate between this action, and that which is inherently bad (*al-af'al al-hissiyya*). Similarly, a servant will not be incapable of not committing an inherently bad action.

From this, secondary rulings can be derived regarding corrupt transactions (using lawful items - *bay' al-faasid*, as opposed to unlawful items – *bay' al-baatil*). If somebody did do these (*haram* through added conditions or dates specified etc.), it will establish ownership on the buyer of the item, and it will be lawful for the seller to take the payment - although it will be sinful. Similarly, the same principle applies to a corrupt lease - the consequences will apply, and both parties will still be allowed to take their agreed exchange. However, although it gives the benefit of ownership at the time of the transaction, it is *wajib* to cancel the transaction.

Some may criticise this and say that you are not allowed to marry a *mushrika*, or someone else's wife, or your step-mother, or a woman in her *iddah*, but using this principle – a *nikah* should still be valid even though it is *haram*. However, the reason why marrying from these categories is totally *haram* is because the consequences of the two actions contradict. For example, the consequences of *nikah* makes relations with ones spouse *halal*, and the consequences of why you cannot marry from these categories is that having relations with them is *haram*. Therefore, the reconciliation between the two is impossible – thus, making non-marriage from those categories an enforced prohibition altogether.

Keeping the previously mentioned principle in mind – that in a *bay' al-faasid*, you become the owner, if grape juice bought in a corrupt way turns into alcohol, the ownership will remain. That fact that it has become alcohol will not make it into a *bay' al-baatil*, as it was initially grape juice.

Based on this, the Hanafi scholars have said that if one were to make an oath to fast on 10th *Dhul Hijjah* or on the days of *tashreek* – his oath would be valid even though it will not be allowed. This is because he has made an oath of a legally permitted action; fasting. Similarly, to make an oath to pray *salaah* during a *haram* time will be valid as it is a legitimate form of worship, although doing it will be not be allowed.

Based on what we have said regarding *tasarrufaat al-shari'yyah*, if somebody made an oath and started praying the *nafl salaah* during the *haram* times, it will be necessary for him to complete it – and he will not be considered as doing something *haram* by completing it. This is because there is a way out for him to not commit the *haram* action, by pausing in his *salaah* until the *salaah* time becomes lawful. This makes it possible for him to complete his *salaah* without any detestability. And from this, we can differentiate between making an oath to pray during a *haram* time, and making an oath to fast during on 10th *Dhul Hijjah* – as the latter has no option to make it a *halal* during the action. Because of this, it is not necessary to complete the fast on 10th *Dhul Hijjah* if it has been started – since the person will not be able to get out from the *haram*.

Based on this, having relations with one's wife whilst she is on her period is prohibited, and because of this – if somebody did do this, the consequences would still be established. These consequences are that the man will still be considered as a *Muhsan* (stoning will be punishable on him, if he had relations with another woman). The consequence will also count as a *halala* if she chooses to return to her previous husband.

Also, if they have been recently married – the dowry will now be necessary upon her. Based on this, if she says that she will not be a wife until her dowry is given after intercourse has taken place – according to the two students of Imam Abu Hanifah, it will be classed as her being disobedient.

Rule: Just because something is *haram* or *makruh*, it does not mean that its consequences do not come into effect. For example:

1) Divorce of a woman in her period. It may be unlawful in this period, but its consequences will still come into effect.
2) To perform *wudhu* with snatched water, will still complete the *wudhu*.
3) To pray *salaah* in a snatched land will not be allowed, but the *salaah* will still be accepted.
4) To hunt with a snatched bow, the food caught will still be *halal*.
5) To slaughter an animal with a snatched knife, the animal will still be *halal*.
6) To engage in transactions during the *athan* of *jummu'ah* – the transaction will still be valid.

Indeed the consequences will come for all of the above transactions, even though they involve some error or disliked elements. Based on this principle, the Hanafi scholars have considered the following ayah: *"And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and* ***do not accept from them testimony ever after****.."* (Surah An-Noor, ayah 4).

The question here is, should the testimony of these people still be accepted, even though it is wrong? The answer is that these people will not be accepted, as they cannot give testimony to a *Qadi*, but only bear witness to a testimony (such as with a *nikah*). Because indeed, a *fasiq* is still able to give and witness testimony, but they have just been barred from giving it due to their lack of honesty. This will also include a case where he may want to witness against his own wife, who may have cheated on him later on.

Section Seventeen:
The Varying Interpretations of The *Nas'*

One should know that there are many ways of knowing the meaning and interpretation of the *nas'* (clear text). Therefore:

Rule: When the literal and metaphoric meanings of a word differ, the *haqiqi* meaning will be better for one to act upon.

Example:

For example, the daughter (*bint*) of an unmarried couple will not be allowed for marriage to her adulterous father of birth. Here, the word *bint* can literally mean anyone created from one's semen, whereas metaphorically it refers to a daughter through wedlock (according to Imam Shafi'i) – thus resulting in two differing meanings. Therefore, rulings are derived based on the principles of the two *madhabs*.

According to Imam Shafi'i, if someone married a girl created from his own semen out of wedlock – it will be allowed, and intercourse will be allowed as it will be a valid *nikah*, and *mahr* and maintenance will be obligatory. However, the Hanafis prefer the literal meaning, and say that you cannot marry anyone who is created from your semen. And therefore, none of the consequences of *nikah* will be established, as it will not be valid in the first place.

Rule: When there is a situation where an ayah has two possible meanings - one with a restricted (*takhsees*) meaning, whilst the other gives a more generic meaning – in that situation, we will act upon the ruling that is generic, and not restrictive.

Example:

For example, in the ayah, *"..or you have* ***contacted (la mastum)*** *women.."* (Surah An-Nisa, ayah 43), the word *la masa* can either mean 'to touch', or 'to have relations'. We realise here that 'touching' gives it a restricted meaning, and therefore we take the other meaning – as it is more open and clear, giving it the meaning of 'intercourse'. Therefore, according to Imam Shafi'i – touching a woman will break one's *wudhu*. However, even he does not act upon this particular principle completely - as he says that a *maharim* woman (mother etc.) or a young girl does not affect the *wudhu*.

Based on this, rulings can be derived according to the two *madhabs*, as to the consequences of touching a woman who is unlawful. According to Imam Abu Hanifah, it is permissible to touch an unlawful woman, and then pray *salaah*

afterwards. However, according to Imam Shafi'i, you must do your *wudhu* again in order to perform the *salaah*. The same ruling applies for touching a *mushaf*, and entering a mosque (Imam Shafi'i says to enter a mosque without *wudhu* is disliked). Also, when leading *salaah*, there is a need for *tayammum* if water is not available, and the *salaah* will be broken if one remembers a 'touching' that he had forgotten.

Rule: There may be a situation where there are two ways to read a particular *ayah*. Here, we will act upon it in a way where we can act upon both meanings together. This is the preferable approach, and far better.

Example one:

Allah says regarding *wudhu*, *"..and **arjulakum** your feet to the ankles.."* (Surah Al-Ma'idah, ayah 6). This ayah can wither say *arjulakum* (wash), or also *arjulikum* (*mas'a*). Here, both are possible, as we act upon the meaning of *arjulakum* when one is not wearing leather socks, and *arjulikum* when he is. In the *ikhtilaf* whether *mas'a* over leather socks is from the Qur'an or Sunnah, those who say it is from the Qur'an use this evidence. It can be noted that the Shi'a perform *mas'a* over the feet. Although this is acceptable, it is against the *ijma* of the Sahaabah (RA).

Example two:

Allah says, *"..so keep away from wives during menstruation. And do not approach them until they are **yathurna**.."* (Surah Al-Baqarah, ayah 222). Here, it can be read as either *yathurna* (pure) or *yattahharna* (to purify) – with a *tashdeed* on the letter *'ta* (طّ).

According to the Hanafis, the rule is that if a period of bleeding lasts less than ten days – she will have to have *ghusl* before the husband can have relations with her, as there is always the possibility that the bleeding may come back again. It is because complete purification is established when *ghusl* is performed. However, if it lasts for the maximum of ten days – then the husband can have relations with her without the need for a *ghusl*, as after ten days – there is no danger of any further bleeding. In regard to this principle, the Hanafis take the meaning of *yattahharna* (to purify) when period finishes before ten days, and the meaning of *yathurna* (pure) after ten days have passed.

If someone bleeds less than ten days, she only becomes purified after *ghusl*, and therefore, she will not be obligated to pray a *salaah* if there is not enough time for her to do *ghusl* and do *takbeer tahreemi* (the initial *takbeer* after intention of *salaah*) in this period. However, if a full ten days have passed, even if there is only a small amount of time left for a *salaah* to be performed when she becomes pure, it will become obligatory upon her – as she can pray straight away.

Section Eighteen:
Examples of Weakly Derived Rulings

In this section, there will be examples of weakly derived rulings according to the Hanafi School, so that it can act as a warning against confusion.

Example one:

There is a hadith in Abu Dawud, which narrates that the Prophet (SAW) had vomited and did not perform *wudhu* afterwards. This hadith is used by Imam Shafi'I toe stablishe that vomiting does not invalidate one's *wudhu*. However, according to the Hanafi scholars, this opinion is *da'eef*.

This particular ruling cannot be derived from this hadith, because the hadith indicates that vomiting does not necessarily establish the requirement for *wudhu* straight away, as perhaps the time of the next prayer had not yet entered. There is no proof to say that he had vomited during a time of *salaah*, which he had not prayed yet. There is no *ikhtilaf* that vomiting does not require one to do *wudhu*, but the *ikhtilaf* is in whether vomiting breaks the *wudhu* or not.

Example two:

Allah says, *"Prohibited to you are* ***dead animals (mayta)****.."* (Surah Al-Ma'idah, ayah 3).

When a fly (or something similar) passes away in water, according to the Hanafi scholars, the water does not become *najas* (impure), as they do not have flowing blood inside. However, according to the other schools, the water does become impure, and this is derived from the ayah above. This is because all dead animals (*mayta*) are haram and impure, and therefore the water will become impure too.

The *nas'* of the ayah establishes the haram of the *mayta* – and there is no *ikhtilaf* in this. But where there is difference is whether water becomes impure or not. The ayah is clear in regards to the former, but to derive the latter – according to the Hanafis – is *da'eef* as it has not been clearly mentioned, and therefore the ayah cannot be used as a *daleel* to establish it.

Example three:

There is a hadith in Abu Dawud that explains how to remove blood from one's clothing – you wait for it to dry, and then scrape it off, and then wash it with water. Everyone agrees that water can be used to remove impurities, but the difference of opinion is regarding whether it is permissible to use vinegar to remove impurities from one's clothes.

The other Imams are of the opinion that you cannot use vinegar to remove blood, but only water – and this hadith is used as proof for this. However, the Hanafi scholars say that this hadith is only applicable where only water is found.

Example four:

There is a hadith in Bukhari and Ibn Majah that mentions that 1/40th of one's ownership of livestock must be given as *zakaah* – and there is no *ikhtilaf* in this. However, the question is, instead of giving a animal – is it permissible to give the equivalent amount in money? The Hanafis say that this is allowed, but not according to Imam Shafi'i - he says that an actual animal must be given, and he derives it from this hadith.

Example five:

Allah says, *"**And complete (atimmul) the Hajj and 'umrah** for Allah.."* (Surah Al-Baqarah, ayah 196).

Although everyone knows that *hajj* is an obligation, Imam Shafi'i uses this ayah as a proof to say that *umrah* is also an obligation, whereas it is only a *sunnah muakkadah* according to the Hanafis.

The Hanafis say that this is not a correct method of deriving a ruling from this ayah, as the ayah says *atimmul* – telling us that if we start our *umrah*, only then is it *wajib* for us to complete it – and there is no *ikhtilaf* in this. However, the *ikhtilaf* is in whether the *umrah* is *wajib* to perform from the every beginning.

Example six:

The hadith collections tell us to not exchange one *dirham* for two *dirhams*, nor one *saa'* for two *saa's* (in order to avoid *riba*). The Hanafi scholars say that although one should cancel these transactions, if he does not – ownership is still established through this corrupt transaction.

In contrast, Imam Shafi'i says that you cannot become an owner of an item through a *bay' al-faasid* transaction. In response, the Hanafis say that the Shafi'i position is weak, as the hadith is only telling us that these transactions are haram – and there is no *ikhtilaf* in this. However, to use it as proof in order to say that a *bay' al faasid* transaction does not establish ownership is weak – as this is not mentioned in the hadith.

Example seven:

There is a hadith in Muslim and Tirmidhi which mentions that no fast should be kept on 10th *Dhul Hijjah*, or on the days of *tashreek*, as they are the days of eating, drinking and intercourse.

The Hanafi scholars say that to establish from this hadith that 'to make a vow to fast on 10th *Dhul Hijjah* is not correct' is a weak opinion, and therefore, there is a difference as to whether this vow will come into effect or not. Imam Abu Hanifah says that it will come into effect, as even though it is prohibited. He says that to make a vow for the 10th of *Dhul Hijjah* is doable, but one should fast it on another day instead, whereas Imam Shafi'i says that even this vow itself is not counted. The Hanafi scholars say that the Shafi'i opinion is *da'eef* because the hadith is only saying that it is haram to keep the actual fast itself, and there is no difference regarding the fasting being *haram*. The only difference is regarding whether the rulings come into effect, in spite of it being *haram*.

Rule: Just because an action is *haram*, it does not negate the consequences of the action. Therefore, if he was to do the haram action, the effects will come into place. For example:

1) To give three *talaqs* is not allowed, but its consequences will come into effect.
2) If a father was to make the slave-girl of his son into an *umm walad* – it will be *haram*, but the ownership will be established for the father – so the child will now be attributed to the father of the new child. The child will also follow the status of his father, and be free. As per the rule, after the master passes away – the *umm walad* will also become free.
3) If one were to sacrifice a sheep with a snatched knife – the animal will be considered lawful and *halal*.
4) If one were to wash impure clothing with *haram* water, the clothes will be considered pure.
5) If a man were to engage in intercourse with someone whilst she is on her period, the man will become a *muhsan*, and the woman will be available for marriage to her previous husband, as the intercourse will justify *halala*.

Section Nineteen:
The Letter *Waw* (و)

The previous lessons dealt with understanding how rulings are derived from different types of words and sentences from within the Qur'an. However, the beauty of the Qur'an is that rulings can also be derived from letters and particles, and this is what the next few lessons focus on.

The letter *waw* is used in order to combine, like the word 'and' in English. However, Imam Shafi'i is also of the opinion that it gives an additional meaning of *tarteeb* (order). So – 'Zayd came, *wa* Amr' - will mean that although Zayd came with Amr, Zayd came first.

Based on this, Imam Shafi'i makes *tarteeb wajib* in *wudhu*, in reference to the ayah; *"O you who have believed, when you rise to (perform) prayer, wash your faces* ***and (wa)*** *your forearms to the elbows* ***and (wa)*** *wipe over your heads* ***and (wa)*** *wash your feet to the ankles.."* (Surah Al-Mai'dah, ayah 6). Imam Shafi'i says that because of the letter *waw*, it is signifying an order – and therefore, it is *wajib* to follow it.

However, the Hanafis say that the letter *waw* only give a meaning of *mutlaq jam'* (meaning of 'and'), and does not necessarily give a meaning of *tarteeb*. For example:

Example one:

If a man were to say to his wife, *"If you speak to Zayd and (wa) Amr, you are divorced"*, and she then spoke to Amr, and then Zayd – she is divorced.

Example two:

Similarly, if he said, *"If you enter House A, and (wa) House B, you are divorced"*, and she then entered House B, before House A – it is sufficient for divorce.

Note: Sometime the letter *waw* gives the meaning of 'and', and sometimes as a means of starting a new sentence, and sometimes as a conditioning (*shar't*). Below are some more examples of this:

Examples of the letter *waw* being used in order to start a new sentence, and as a *shar't* (condition)

Example one:

Imam Muhammad mentions that if a man says to his wife, *"If you enter the house you, and (wa) you are divorced"* – she is divorced straight away. This is because the *waw* will treat the second part of the statement as a different sentence, and will not connect it to the first part (entering the house). However, if he had meant it as *tarteeb* (order), then *talaq* will only occur upon her entering the house – and in that situation, it will become a condition (*shar't*), and *talaq* will not occur straight away.

Example two:

If a master says to his *ma'dhoon* (those slaves who are permitted to buy and sell), *"Hand me over one thousand, and (wa) you are freed"*. Here, the giving of one thousand has become a condition (*shar't*) for him to become free.

Example three:

Imam Muhammad also mentions in *As-Seer Al-Kabeer*, that when the leader of the Muslims says to the *kuffar* during war, *"Open the doors of your fort, and (wa) you will receive amnesty"* – there will be no amnesty until the doors are opened. This *waw* will not be understood as a *mutlaq jam'*, but as a *shar't*. Similarly, if he said, *"Descend, and (wa) you will receive amnesty"* – he will not receive amnesty until he departs the fort.

Rule: To take the meaning of *waw* as a *shar't*, it has to have the possibility of one taking a *shar't* meaning, and there has to be an indication that the literal (*haqiqi*) meaning is not being taken.

Example four:

For example, when a master says to his slave, *"Hand me over a thousand, and (wa) you will be free"* – we know this is a *shar't*, as freedom is established through the handing over of money, and because the master does not normally take money from a slave.

Rule: The literal meaning is taken before the metaphoric meaning at all times – unless an indication is given, as explained previously).

Example five:

If a man said to his wife, *"You are divorced, and (wa) you are ill, or you are praying salaah"* – divorce will occur straight away. This is because we will assume that they are separate sentences. Even though it has the possibility of a conditional sentence – the *dhahir* (apparent) meaning goes against it. However, if the husband made the intention of the divorce being conditional on her being ill – his intention will be correct, and that meaning will be taken, and the authenticity of the intention is between him and Allah.

Example six:

If one were to say to another, *"I give this thousand to you as mudaarabah (as a silent partner), and (wa) invest in clothing (badh)"* – the thousand will not be restricted to clothing (*badh*). This is because investing in clothing cannot be a condition in partaking in a *mudaarabah* deal, and therefore, the beginning of the sentence will not the connected to the second part. Thus, the second part will not be condition on the deal, but only classed as a command. So, in effect, he is saying, *"I give you this thousand"*, and *"Invest in clothing"*.

Example seven:

If a wife said to her husband, *"Divorce me, and (wa) to you is a thousand"*, and her husband then grants her a divorce, nothing is obliged upon her. This is because the divorce is not conditional on the thousand. This is because the literal understanding of the first part of her sentence made sense grammatically - without the need for a condition.

Example eight:

If one said to a porter, *"Carry these goods for me, and (wa) for you is a dirham"* – in this situation, the second part of the sentence (giving a *dirham*) will be connected to the first part of the sentence (carrying the goods). The reason for this is that there is an indication here that the *waw* is there as a *shar't*. This is because the job of a porter is to carry goods for a fee, and not for free.

Section Twenty:
The Letter *Faa* (ف)

The letter *faa* gives the meaning of something straight after another. For example - 'Zayd came, *fa*-Amr' – this indicates that Amr came immediately after Zayd. This is the reason why the letter *faa* is used in *shar't* (conditional) sentences. The *faa* comes straight after the *shar't,* in order to establish the immediate consequences (*jadha*).

Example one:

When one says to another, *"I have sold you this slave in exchange for a thousand"*, and the customer replies, *"He (fa-huwa, not wa-huwa) is free"*. The customer's statement will now act as an acceptance of the *bay'* (transaction). Therefore, the customer will have to pay the thousand, and the slave will become free straight away, as the *faa* establishes the consequence immediately.

However, if the customer replied, *"Wa-huwa hurrun (and he is free)"* or *"Huwa hurrun (he is free)"* - it will not connect it to the statement by the seller, and it will not establish the *bay'*. To add to this, if it is taken literally, it would not make sense – as a free person cannot be sold.

Example two:

If one said to a tailor, *"Look at this material, is it enough to make a shirt?"* and the tailor then looked at it and replied, *"Yes",* to which the man said, *"Then cut it (fa-qta'hu)"* – this connects it to the previous sentence, as it has now been established by the tailor that the material is sufficient to make a shirt. If it now appears that the material is not sufficient for a shirt after it has been cut – the tailor will be held responsible. If the man had said, *"Iqta'hu (cut it)"* or *"Wa-qta'hu (and cut it)"* – it will not be counted as a command linked to the tailor's observation.

If the man had said, *"I am selling you this material for ten dirhams, then cut it (fa-qta'hu)"*, and the tailor then cuts it – the *bay'* will again be established, as the cutting is connected to the ten *dirhams*, regardless of whether he replied or not.

Example three:

If a man said to his wife, *"If you enter House A, and then this (fa-hadha) House B, you are divorced"* – for the divorce to occur, she will have to enter House B immediately after entering House A. Therefore, if she entered House B first, or House B after a while – the divorce will not occur.

Note: Sometimes the letter *faa* can come as a *bayan 'illa* – in order to explain the reason for something (i.e. 'do this for this reason').

Example one:

A master says to his slave, *"Give me a thousand, you (fa-anta) can be freed"* – here, the slave will be freed straight away, even though he has not paid anything yet. The reason is because the first part is an *insha-iyyah* (where the statement cannot be either true or false, such as a 'command') sentence, and the second part is a *khabariyyah* sentence (where the statement can be either true or false) – and you cannot connect them both. Therefore, the *faa* will not connect the second part to the first part, and the slave will become free straight away – despite not paying.

Example two:

If someone said to an enemy during war, *"Descend, and you (fa-anta) will receive amnesty"* – the second part will not connect to the first part, and the amnesty will be given before they have descended. This is because asking another to 'descend' is a command (*fi'l amr*) - and an *insha-iyyah*, and the second part (which is a *khabariyya*) cannot be joined with it.

Example three:

A husband said to his *wakeel*, *"The matter of my wife is in your hands, so therefore give her talaq (fa-talliqha)"*. As a result, the *wakeel* then gave her a *talaq*. Here, a *talaq ba'in* (ambiguously worded, non-retractable divorce) will occur. This is an example where the *faa* is a *bayan 'illa* – in other words, the second part is figuratively attached to the first part – as the first part is a *khabariyya* sentence, and the second is a *fi'l amr* – therefore the husband is saying, *"Divorce her, because her matter is in your hands".*

However, if a husband said to his *wakeel*, *"Give her talaq, I have given (fa-ja'alta) her matter in your hands"*. Here, the *talaq* was mentioned first, and clearly – therefore, the divorce that will occur will be a *talaq raj'ee* (retractable divorce). If he had said, *"Divorce her (1), and (wa) I have placed her matter in your hands (1)"* – two *talaqs* will occur. Similarly, if he said, *"Give her divorce (1), and (wa) separate her (1)"* – two *talaqs* will occur.

It must be noted that the consideration of *talaq* is based on the woman, and whether she is free or not. As a free woman, the right you have on her is three *talaqs*, whereas with a slave girl, she becomes divorced with two *talaqs*.

Based on this, the Hanafi scholars have discussed *khiyarul itq* (when a master forces his slave to marry). In such a situation, the Hanafis have said that when a married slave girl has been freed, her *khiyar* will be established, and she will

have the choice of either staying in the *nikah* regardless of if her husband is a slave or not. An example of this is Bareera (RA) ending her marriage when freed by Aisha (RA), and the Prophet (SAW) saying to her, *"You have become the owner.., so therefore (fa-akhtaari) you have been given the choice.."* (Darqutni, Abu Dawud).

But why does she get *khiyar itq* when she becomes free? The reason is, that as a slave, the husband had two rights of *talaq* upon her, but now the master has freed her, and she has become eligible for three *talaqs* on her husband. This extra *talaq* has been granted to him for free, as the dowry was initially given to the initial owner. This is where the rules of transaction come into effect, as where you give an increase, it has to be done in return for something else – and because she has not been given anything extra, the choice is on her if she wants to cancel this 'transaction'.

Section Twenty-One:
The Word *Thumma*

The word *thumma* gives the meaning of a delay, and is equivalent to 'after' or 'and then'. For example – Zayd came, *thumma* Amr – this means that Zayd came, and then (*thumma*) Amr. According to Imam Abu Hanifah, the word *thumma* gives the meaning of 'after', both linguistically as well as in its ruling. However, his students say that it only means 'after' in its ruling.

Example one:

A husband says to his non-consummated wife (to whom one *talaq* is sufficient for divorce), *"If you enter the house, you are divorced, then (thumma) you are divorced, then (thumma) you are divorced"*. According to Imam Abu Hanifah, the first divorce will be connected to the 'entering' (and therefore pending), and the second divorce will occur will straight away regardless of her 'entering', and the third divorce will be considered invalid and ineffectual. However, according to his two students, all three *talaqs* will be connected with the entering. Therefore, at the time of her entering the house, the condition for divorce will become apparent, and the first *talaq* will be established, and the second and third *talaqs* will become unnecessary and ineffectual.

Example two:

A husband says to his non-consummated wife, *"You are divorced, then (thumma) you are divorced, then (thumma) you are divorced, if you enter the house"*. According to Imam Abu Hanifah, the *nikah* is broken straight away upon the first utterance (due to his following of the language). However, his students say that *talaq* will only occur at the time of the *shar't* (condition) being met.

Example three:

If a husband said to his consummated wife, "If you enter the house, you are divorced, then (thumma) you are divorced, then (thumma) you are divorced" – according to Imam Abu Hanifah, the first *talaq* is established upon her entering, but the remaining two *talaqs* will occur straight away. However, If he said, *"You are divorced, then (thumma) you are divorced, then (thumma) you are divorced if you enter the house"* – the first two *talaqs* will occur straight away, and the third (pending upon her 'entering') will be ineffectual. However, because the students of Imam Abu Hanifah say that it is all connected together – all three *talaqs* will only occur when the *shar't* (her 'entering') is established.

Section Twenty-Two: The Word *Bal*

The word *bal* is used in order to rectify a mistake in an utterance. For example – Zayd came, bal Amr – meaning 'Zayd came, oh rather, Amr'. By mentioning the second part after the word *bal*, it rectifies and replaces the utterance before the word *bal*.

Example one:

When a husband says to his non-consummated wife, *"I have given you one talaq, rather (bal) two"* – here, one *talaq* will occur. In principle this is fine, but the retraction is not correct, as a *talaq* is something that cannot be retracted when uttered. Due to this, even though he retracted the first part for the second, the first will occur, as the opportunity for changing your mind on a *talaq* is not allowed. Therefore, she will already become divorced as soon as the first part is uttered. However, if the marriage has been consummated, one *talaq* will occur, as well as *talaqs* two and three. As although the principle of rectifying says it should be two *talaqs*, due to it being regarding a non-retractable utterance, the first utterance will be counted as one, and the two will be counted as a separate two. Thus, making three *talaqs* in total.

Example two:

If someone said to another, *"Upon me ('alayya) is a thousand, no, rather (bal) I owe two thousand"* – three thousand will not be *wajib* upon him, as the second part rectifies the first. However, the word *'alayya* (upon me) is a type of confession (*iqraar*) which cannot be retracted - similar to a *talaq*. Because of this, Imam Zufur says that he has to pay three thousand.

In this regard, why then do the Hanafis say that is two thousand owed? It is because the *haqiqi* shows that the second part is there to rectify and replace the first. But because the first part cannot be annulled, another thousand is added to the original thousand in order to reconcile and not drop the first utterance.. Thus, giving a meaning of, *"One thousand has been added onto the first thousand"* – so that both parts come into effect.

In the first example, the *talaq* cannot be rectified, as it is an *insha-iyyah* sentence, whereas in the *iqraar*, it is a *khabariyya* sentence – and therefore, it is possible to rectify it. So, if the *talaq* were given in a *khabariyya* way, you would be able to rectify it. So if he had said, *"I have given talaq yesterday, but rather (bal) two"* – one will occur, but it can be rectified by adding another *talaq* to the original *talaq* without dropping the first, in order to reconcile both.

Section Twenty-Three: The Word *Lakinna*

The word *lakinna* is used in order for *istidraak* (removes doubt from the previous sentence), after the use of *an-nafy* (a *la*, or a *ma* sentence). For example, Zayd and Amr are best friends, and wherever you find Zayd, you will find Amr. So, I can say – *"I did not (ma) see Zayd, but I did (lakinna) see Amr"*. The *lakinna* establishes the second part of the sentence (I saw Amr). As for *an-nafy* (negation) of the first part (seeing Zayd), it is established, as my utterance (with *ma*) is the evidence (*daleel*) for me not seeing him.

As with other words and particles that we have studied previously, the *lakinna* can also possess either a literal or metaphorical meaning. The literal meaning is that it gives a connected (*muttasiq*) meaning between the part before and after the *lakinna*. This is known if the following two conditions are met:
1) Both parts are connected to each other (*muttasiq*).
2) The two parts (*an-nafy*, the negation, Zayd, and the *ithbat*. the establishing, Amr) are two separate parties.

Example one:

Imam Muhammad says in his *Jami'*, *"If you said to X, upon me is a thousand as a debt"*, then X responds by saying, *"No, this thousand is not as debt, but (lakinna) for snatching"* – the reality is not that X had previously lent you a thousand, but it was snatched from him. Here, a thousand will be necessary upon you, and there is no *ikhtilaf* on this. But the difference is whether it is for a debt or for snatching.

This is because sentence is connected, as the *an-nafy* (negation) is in the actual *sabab* (cause; either debt or snatching), and not the money itself – and there is no *ikhtilaf* in this.

Example two:

Similarly, if someone said to another, *"Upon me is a thousand, because of the price of this particular slave-girl"*, then the other replied, *"No, the slave-girl belongs to you"*, *"But (lakinna) you owe me a thousand because of a debt"*. The thousand will have to be given as there is no difference in that, and difference is only in the *sabab* (either for the slave-girl, or for the debt).

Example three:

If in one's possession is a slave, and he says, *"This slave is for X"*, and X replies, *"This slave has never been for me, but (lakinna) it is for Y"*. If X was to say this

whole sentence together, the slave will be for Y. This is because the *an-nafy* is X, and the *ithbat* is Y – and they are two different people.

If X said the sentence separately after a short pause, it will go back to the original owner, as the two parts of the sentence will not be connected.

Example four:

A slave girl married herself without the permission of her master in exchange for one-hundred *dirhams* (*nikah mawquf* - pending on master's permission). Her master then says, *"I am not going to allow the transaction for one-hundred dirhams, but (lakin) rather I will allow it for one-hundred and fifty dirhams"*. Here, the transaction will become invalid. For the word *lakinna* to give a meaning, both parts have to be separate, yet connected. However, in the master's statement, he is both the *an-nafy* and the *ithbat*. It is as though he is trying to validate the contract, after nullifying it.

Similarly, if the master said, *"I do not validate the marriage, but (lakin) I will validate it if you were to increase fifty upon the hundred"* – it will cancel the marriage, as there is no connection (*ittisaq*) here between the two parts, and the *lakin* will create a new sentence instead of connecting the two parts.

Section Twenty-Four:
The Word *Aw*

The word *aw* is used in order to specify one of two mentioned matters, such as the word 'or' in English. For example - Zayd came, or (*aw*) Amr.

Example one:

If someone said, *"He is a slave or (aw) him"*, it is the same as saying, *"One of them is free"*. For him, there is now an option to choose which one is now free.

Example two:

If a master said in front of two agents, *"I have made an agent to sell slave X, him or (aw) him"*. In this situation, one of the two agents will become an agent to sell the slave, and it is permissible for each of them to try and sell the slave. If one of the two agents did sell the slave, and the slave later returned back to the ownership of the original owner, then it is not permissible for the other agent to resell the slave.

Example three:

If a husband said to his three wives, *"You are divorced, or (aw) you, and (wa) you"*. Here, one from the first two will be divorced, and the third will be divorced, because of it being linked to the first part.

Example four:

If a man said to an agent, *"Sell this slave or (aw) this slave"*, the agent will have the choice of selling one of either slaves.

Example five:

If a man said to a woman, *"I will marry you on the condition that I will give you as dowry, this or (aw) this"*. In this situation, we will look at the dowry in her lineage to try and work out what is the most suitable dowry according to the prevalent amount (*mahr mithl*), as the word *aw* includes one of the two items – and a preference will be given to the more suitable of the two.

Based on this, the Hanafi scholars say that performing the *tashahhud* is not a *rukn* of *salaah*. It is because the Prophet (SAW) said to ibn Mas'ud (RA), *"If you were to say this (tashahhud), or (aw) if you were to do this (stay in the sitting*

position), your salaah is completed" (Abu Dawud). Here, the Prophet (SAW) has connected the completion of the salaah with one of the two, and both are not necessary. However, the *ulama* agree that the sitting is a condition in *salaah*, and therefore the saying of the *tashahhud* is not a *fard*.

Rule: When the word *aw* is in the *an-nafy* section (negation via a *la* or *ma*), it establishes the negation of the two mentioned matters.

Example:

If somebody were to say, *"I will not (la) speak to him or (aw) him"* – his oath will break if he speaks to either of the two, as the negation is applicable for both of them, and he will not have a choice to decide between the two. However, if he said, *"I will speak to him or (aw) him"* in a positive way, he will have a choice on whom to speak to.

Rule: Whenever you have a choice, each and every single option is permissible and allowed to act upon.

Example:

For example, Allah says, *"Allah will not impose blame upon you for what is meaningless in your oaths, but He will impose blame upon you for (breaking) what you intended of oaths. So its expiation is the feeding of ten needy people from the average of that which you feed your (own) families* ***or (aw)*** *clothing them* ***or (aw)*** *the freeing of a slave. But whoever cannot find (or afford it) - then a fast of three days (is required). That is the expiation for oaths when you have sworn.."* (Surah Al-Mai'dah, ayah 89).

Here, unless one cannot afford to do so, he has the option of expiating a broken oath through either feeding ten poor people, or clothing them, or freeing a slave.

Note: Sometimes the word *aw* can come in the meaning of *hatta* (until). For example:

Example one:

If one said, *"I am not going to enter this House A, aw (in the meaning of hatta) I enter this House B".* If he were to then enter House A first, his oath will break as he will not be following his oath. If he entered House B first, his oath will still be intact.

Example two:

If a man was to say, *"I am not going to separate from you, aw (meaning hatta) you pay me my debt"* - it will not be a valid divorce until the debt is paid.

Section Twenty-Five:
The Word *Hatta*

The word *hatta* comes in the meaning of 'until', and sometimes in the meaning of an ending (*ghayath*), similar to the word *ila*. When the word before the *hatta* is able to give a prolonged or continuous meaning, and that which is after the *hatta* is capable of ending it, then the word *hatta* is going to act upon its literal *haqiqi* meaning.

Example one:

If one says, *"My slave is free if I do not hit you, until (hatta) someone intercedes, or until (hatta) you scream, or until (hatta) the night appears, or until (hatta) you complain"* – all of the possibilities mentioned after the word *hatta* have the possibility of stopping the hitting (which can be done continuously). Therefore, if any of these happen, the *haqiqi* meaning of *hatta* will end the hitting. If the person stops the hitting before any of the possibilities are carried out – his oath will break in that situation, and the slave will be free.

Example two:

If somebody made an oath that he will not leave the person who owes him, until (*hatta*) he pays his debt, and he left before it is paid – his oath will break.

Note: Often, because of *'urf* (custom), the *haqiqi* meaning of *hatta* is not taken. For example:

Example:

If someone were to make an oath that he will hit another until (*hatta*) he dies, it will not be taken literally, but figuratively. Even though hitting is a continuous action, and death will put an end to the hitting – the customary (*'urf*) understanding of the phrase will change the meaning. Therefore, the 'hitting' will be understood as 'severe hitting'.

Rule: If there is no possibility of a *ghayath* (ending) – i.e. If the first part does not give a prolonged meaning, and similarly the second part does not end it, the first part (before *hatta*) will be understood as a condition (*shar't*), and the second will be understood as *jadha* (the consequence).

Example:

If A said to B, *"My slave is free if I do not come to you, and until (hatta) you have lunch with me"*. Then A came, and B did not have lunch with A - but A's oath will not break. This is because the first part (A's coming) cannot be continuous, and similarly, the second part (B having lunch with A) does not end the coming of A. Therefore, the *hatta* will give the meaning of 'so that', and the sentence will be understood as – *"My slave is free if I do not come to you, so that you can eat with me"*. So, if he came and he did not eat, the oath will not break, and the slave will not be free. And if he did eat, the oath will break and the slave will be free. It is because feeding is not capable of ending the coming, but rather invites more people to come.

Rule: Sometimes where there is no possibility of taking *hatta* as either a *ghayath* or *shart/jadha*, it will be understood as an absolute 'and'.

Example:

If one said, *"My slave is free if I do not come to you, and until (hatta) I eat with you"*. Here, the first and second part is attributed to the same person, but both the *shar't* and the *jadha* cannot be attributed to the same person. Therefore, it is not appropriate that the action be a condition. Thus, to fulfil the oath – he needs to come and eat. If he does not want to fulfil the oath, he just comes without eating, and the slave will become free.

Section Twenty-Six: The Word *Ila*

The word *ila* comes in the following meanings:
1) *Imtidaad*: As a way of lengthening the ruling.
2) *Isqaa't*: As a way of cancelling something.

For the first type, the 'ending' will not be in the meaning. But for the second type, the 'ending' will be meant. For example:

Example one:

If one said, *"I bought (ishtaraytu) this particular land, ila (towards the direction of) this particular wall"*. This *ila* is prolonging the land, by stretching its length. Here, the wall will act as the guide to the direction of the land, and will not be included in the transaction.

Example two:

If someone sold an item with a refund option of up to (*ila*) three days, the three days will include the third day, and the refund period will end after that.

Example three:

If one said, *"I will not speak to someone until (ila) a month has passed"*. Here, the month will be included in the ruling.

Based on this, the Hanafi scholars say that the elbows and the ankles are included in the ruling of washing during *wudhu*, as Allah says, *"O you who have believed, when you rise to (perform) prayer, wash your faces and* ***your forearms to (ila) the elbows*** *and wipe over your heads and* ***wash your feet to (ila) the ankles****.."* (Surah Al-Mai'dah, ayah 6).

Here, the command before *ila al-marafik* (to the elbows) is 'to wash' - and this cannot be stretched, and therefore it will include the elbows. If the phrase *ila al-marafik* was not there, and Allah said to 'wash arms', the obligation would have been to wash the arms up to and including the shoulders, and thus, *ila al-marafik* puts an end to this.

Similarly, the Hanafis say that the knees are put of one's *awrah*, as Prophet (SAW) said that the *awrah* is up to (*ila*) the knee, and therefore including it as part of it (Darqutni).

Note: Sometimes, the *ila* gives the meaning of delaying the ruling until the ending point.

Example:

If a husband said to his wife, “You are divorced until (*ila*) a months time” – other than Imam Zufur, the Hanafi scholars say that the divorce does not occur straight away. This is because the ‘month’ after *ila* does not stretch it, and the word *talaq* has the possibility of being delayed if it has a condition.

Section Twenty-Seven:
The Word *'Ala*

The word *'ala* comes in the meaning of making something necessary. It gives the meaning of something high, and something big.

Example:

Because of this, if someone said, *"Upon ('ala) me is a thousand"*, it will be interpreted in the meaning of debt. If he said, *"With me (indee, ma'ayee) is a thousand"* – it will not give the same meaning of debt.

Based on this, Imam Muhammad says in *As-Seer Al-Kabeer*, *"If the leader of the enemy fort says, 'Give me amnesty over ('ala) ten people from within this fort'"*, and the Muslim commander responds by saying, *"Yes"*, the ten who will be given amnesty will not include the enemy leader, although the choice of the ten people will be upon (*'ala*) him.

However, if he had said, *"Give me amnesty for ten, then (thumma) another ten"* – the leader of the Muslims who gave the amnesty will have control over who is given amnesty. This is because the word *thumma* was used instead of *'ala*.

Note: Sometimes *'ala* can be used metaphorically, in the meaning of the letter *baa* (ب).

Example:

If one said, *"I sold you this upon ('ala) a thousand"*, it will mean, *"I sold you this in exchange for (ba) a thousand."*

Note: Sometimes *'ala* can give the meaning of a *shar't* (condition).

Example one:

Allah says, *"O Prophet, when the believing women come to you pledging to you **that ('ila)** they will not associate anything with Allah.."* (Surah Al-Mumtahanah, ayah 12). Here, the women pledged allegiance with the Prophet (SAW) on the condition that they will not prescribe partners with Allah.

Example two:

Because of this principle, Imam Abu Hanifah says, if a woman says to her husband, *"Give me three talaqs 'ala (upon the condition) that I will give you a thousand"* - it will not be due upon her if he gives her only one *talaq*. This is because he did not fulfil her condition, thus nullifying her obligation to give the thousand.

Section Twenty-Eight:
The Word *Fee*

The word *'fee*, often translated as 'in' in English, comes in the meaning of specifying or giving extra meaning to a time, place or an action. Below are some examples, demonstrating its use in all of these situations:

Time

Example one:

If a husband says to his wife, *"You are divorced fee (in) tomorrow"*, here the students of Imam Abu Hanifah are of the opinion that it is the same whether you say *fee* or not. They understand the rules to be the same either way, and that the *talaq* will occur as soon as *fajr* approaches in both situations.

However, Imam Abu Hanifah has mentioned that if the word *fee* was deleted, the *talaq* will occur as soon as *fajr* approaches. However, when the *fee* is mentioned, the meaning taken will be; that the *talaq* will occur from a part of the next day. However to avoid any conflict or issues, and if the intention of timing is not found, then *talaq* will occur in the first part of the day. If however, an intention is apparent for the latter part of the day, his intention will be correct, and the *talaq* will occur in the latter part of the day.

Example two:

If a husband said to his wife, *"If you were to fast a month, you are divorced"* – and she then fasted for a complete month, it will result in a divorce. But if he said, *"If you were to fast fee (in) the month, you are divorced"* – the divorce will occur as soon as she refrains from eating, drinking, or intercourse in the month, even for a small moment.

Place

If the word *fee* is used for the meaning of 'place', such as saying: *"You are divorced fee (in) London"* – here, it will give a meaning of divorce in all places – as a *talaq* cannot be applied from place to place.

And based on this, the Hanafi scholars say, that if somebody said wanted to do an action, and then attributed it to a specific time or place – if the action is such that it needs him for it to be carried out, it is a condition that he remains there, in that

particular time or place. This is because the action only comes into place because of its cause, as a fi'l muta'adda requires the doer for it to be carried out.

Example one:

Imam Muhammad says in his *Jami' Al-Kabeer*; If A said to B, *"If I was to swear at you fee (in) the mosque, then my wife will be divorced"*, and then A swore at B whilst he (A) was in the mosque, his oath will break, and he will be divorced. But if A (the swearer) was outside of the mosque, whilst B (his victim) is inside, the oath will not break – as the oath requires the swearing to take place in (*fee*) the mosque.

Example two:

If A said to B, *"If I was to injure you fee (in) the mosque, my wife is divorced"* – here, if A (the doer) is outside of the mosque, and he hits and injures B (who is inside in the mosque), the oath will be break.

Example three:

If A said to B, *"If I killed you fee (in) Thursday, then so and so.."*, and he then attacked B on Wednesday, which resulted in B dying on Thursday, then the oath will break. Even though he did not kill him on the Thursday, his intention was still carried out as a result. But if B died on Friday instead, his oath will not break, and its consequences will not be established.

Action

The word *fee* can also give a meaning of a *shar't* (conditioning), when it is connected to a verb. For example:

Example one:

If a husband said to his wife, *"You are divorced fee (in) your entering of the house"* – here, her entering is understood as a *shar't* (condition) for her divorce. If she does not enter the house, the *talaq* will not occur.

Example two:

If a husband said to his wife, *"You are divorced fee (in) your period"* – if she is on her period at that moment, the *talaq* will occur straight away. Otherwise, it will occur when she next enters her period.

Example three:

Imam Muhammad says; if a husband says to his wife, *"You are divorced fee (in) the coming of the day"* – she is divorced as soon as the *subh sadiq* enters.

If he had said, *"You are divorced fee (in) the passing of the day"* at night, *talaq* will occur at sunset time of the following day. However, if it was said during the day, the divorce will also occur during the sunset of the following day – as a full day will need to pass for the condition for divorce to be met.

Example four:

If a husband said to his wife, *"You are divorced according fee (in) the Will of Allah, or fee (in) the Intention of Allah"* – here, *talaq* will not occur, as we do not know Allah's Will, and therefore, the meeting of the shar't will not be known by us.

Section Twenty-Nine: The Letter *Baa* (ب)

The letter *baa* comes in the meaning of *ilsaaq* – in order to join two things. For example, *"marartu bi-zaydin"* – I passed by (*bi*) Zayd. Because of this reason, the letter *baa* is joined with the second part (*thaman*), which is the condition for giving meaning to the first part of the sentence.

Therefore, in a transactiom, what we derive from this principle is that the original item in a *bay'* is the *mabee'*, and the condition regarding its sale (i.e. the money) is the *thaman* – and the *baa* will attach itself to the *thaman* in order to join them both together.

However, if the *mabee'* (the *asl* – main item) were to perish, then the transaction will be cancelled. But if the *thamam* were to perish, it will not. For example, if you have agreed to buy a phone for £100, if you were to then lose your £100 - it will not end the transaction, and you will have to source another £100. However, if the phone perishes – the transaction will be cancelled.

Note: When a particular point is established, we say that the subservient matter – the *thaman* – is connected with the *asl*, and not vice versa. In life, the people follow the *amir*, and the *amir* does not follow his people. Therefore, when the letter *baa* attaches itself to an item in a transaction, it indicates that it is subservient to the item that it is connected to, and it will never become the *mabee'*.

Example one:

One said to another, *"I sold you this slave for a (bi) 'kur' (a specific measurement) of wheat"*. Here, the slave will be the *mabee'*, and the *kur* of wheat will be the *thaman*. Therefore, it will be permissible to change the *kur* of wheat before the transaction takes place, but not the slave.

However, if he had said, *"I will sell you this kur of wheat for (bi) this slave"* – here, the slave can change, but not the *kur.*

Example two:

One said to his slave, *"If you inform me, of (bi) so and so coming, then you are freed"*. Here, the *khabar* that the slave gives has to be a truthful. This is because the letter *baa* is linked to the 'informing' of so and so coming in actual fact – and that is the condition for the slave's freedom. However, if he were to lie, he would not be freed according to his master's word.

However, if the master had said it without the letter *baa*, it would make the 'so and so' a *mutlaq* utterance, and therefore the slave will be able to notify him of anyone coming.

Example three:

When a husband says to his wife, *"If you were to leave the house, unless with (bi) my permission, you are divorced"* – here, everytime she leaves the house, it has to be with his permission due to the use of the letter *baa*. This is because it links her 'leaving' with his permission, and therefore she will be divorced if she ever left the house without her husband's permission.

However, if he said it without the letter *baa*, it will be a condition just for that specific utterance, and if she left the house without his permission after the initial utterance (to which she left with permission) – divorce will not take place.

Example four:

Imam Muhammad says, if one says to his wife, *"You are divorced with the Will of Allah"* – *talaq* will not occur, as we do not know the Will of Allah.

Section Thirty:
Categories of *Bayaan*

This section deals with the explanation (*bayaan*) of the Qur'anic passages, and its various categorisations. These different *bayaan* methodologies differ depending on the passage in question, and consist of the following seven types:

1) *Bayaan at-Taqreer*

Bayaan at-taqreer is needed where the meaning of a sentence is clear (*dhahir*), yet there is a small possibility that it can mean something else. Here, the *bayaan* is an explanation of that which is clear, and the apparent rule becomes established through this *bayaan*.

2) *Bayaan at-Tafseer*

Bayaan at-tafseer is required where the meaning of a word or passage is unclear, and the *tafseer* is required to clarify and explain it.

3) *Bayaan at-Taghyeer*

The word *taghyeer* means to 'alter' or to 'change'. This is where the meaning of a sentence changes through its explanation. These can be foundly mainly in conditions (*ta'leeq*) and exceptions/clauses (*istithnaa*).

4) *Bayaan ad-'Daroorat*

This is an inferred *bayaan*, where the speaker has not specified something, yet its rulings can be derived from that which he has said.

5) *Bayaan al-Haal*

This is where the lawmaker sees a matter that is clear, and does not object to it – therefore, giving it a silent approval. This silence is as though the lawmaker has said it is allowed.

6) *Bayaan al-'Atf*

This allows for joining two matters when it includes the letter *waw* (*harf 'atf)* in between. If it is in a sentence involving a measured or weighted item, it allows for an explanation to clear any ambiguity that exists in the sentence.

7) *Bayaan at-Tabdeel*

Similar to *bayaan at-taghyeer*, this category comes in order to 'alter' or 'change' a sentence. However, it changes it in order to abrogate it. This is something that is only allowed to be done by the lawmaker, and not by human beings.

Section Thirty-One:
Bayaan At-Taqreer

Bayaan at-taqreer is needed where the meaning of a sentence is clear (*dhahir*), yet there is a small possibility that it can mean something else. Here, the *bayaan* is an explanation of that which is clear, and the apparent rule becomes established through this *bayaan*.

Example one

If one said to another, *"Upon me is a kilogram of wheat"* – the cost will be according to the place in which the transaction is taking place, even though there is still the possibility that it could mean the currency of somewhere else. But if he had added *"..of this land"* at the end of sentence, it would clarify the matter. Without this clarification, it would have been *mutlaq* and understood as that land with a possibility of meaning something else.

Example two

One says, *"For so and so, upon me ('indee) is a thousand, as a trust'"*. Here, by saying *"'indee"*, it automatically gives the meanings of *amanah* (he has one thousand on him, keepin it for someone else), with the possibility of it meaning something else. However, when he added *"..as a trust"* to the end of his sentence, his intention was clarified.

Rule: The ruling for this category is that it is permissible to give the correction either straight away or later on. Both of these are allowed and possible.

Section Thirty-Two:
Bayaan At-Tafseer

Bayaan at-tafseer is required where the meaning of a word or passage is unclear, and the *tafseer* is required to clarify and explain it.

Example one

If one had said, *"Upon me is something (shay)"* – here, the word *shay* is not understood properly. If he were to then explain the word and what it either means or refers to – this is called *tafseer*.

Example two

If one had said, *"Upon me is ten dirhams, for X"*, and he then explains what the X is.

Example three

If one says, *"Upon me is dirhams"*, without clarifying how much he owes. However, he does so later – and this is *tafseer.*

Rule: The ruling for this category is that it is permissible to give the correction either straight away or later on. Both of these are allowed and possible.

Section Thirty-Three:
Bayaan At-Taghyeer

The word *taghyeer* means to 'alter' or to 'change'. This is where the meaning of a sentence changes through its explanation. These can be foundly mainly in conditions (*ta'leeq*) and exceptions/clauses (*istithnaa*).

Example of *ta'leeq* (condition)

If a man had said,*"You are divorce (anti taliqun)"* to his wife, the *talaq* will be effective straight away. However, if he had placed a condition at the end of the sentence – *"If you enter the house"*, it would have altered the ruling so that it only becomes effective upon the meeting of the condition.

Example of *istithnaa* (exception)

One says, *"Upon me is a thousand"*, before adding, *"Except (illa) a hundred"*. Here, initially he would have had to give one-thousand, but the second part added an exception, and changed the amount to nine-hundred.

The scholars have differed regarding *ta'leeq*

The Hanafi scholars say that when a condition (*ta'leeq*) is attached to a ruling or command, it will only come into effect when the condition is found and not before. So, in the example above, the *talaq* will only occur if the wife enters the house. If she does not, the *talaq* will not occur.

In contrast, Imam Shafi'i says that the *ta'leeq* is effective straight away, and the *shart'* not being found is only a barrier from a ruling that has already been established. What he means is that the *talaq* here has become effective straight away – as the command is established straight away. However, because the *shart'* has not been found yet, it is merely a barrier for delaying a ruling that has already been activated.

Part One: *Ta'leeq* (Conditions)

Case study one

If a man says to a strange woman, *"If I was to marry you, then you are divorced"*. Or, if a man said to another man's servant, *"If I become your owner, then you are now freed"*.

In these situations, according to Imam Shafi'i, the conditions will be *batil* and annulled because they are being uttered to people whom the man has no rights over. Thus, rendering his words meaningless. The *ta'leeq* is the connecting of a cause to a situation, and therefore the divorce will not be correct – as there is no connection between a '*talaq*' and a 'strange woman'.

Rule: According to the Hanafi scholars, the command will become effective when the conditions are met. Therefore, because the condition was correct, if he did then marry the strange woman, the divorce would occur. However, for the validity of the *ta'leeq* to occur in a situation where one does not have ownership - the *ta'leeq* would have to be attributed to his ownership. Therefore he will have to say, *"If I was to marry you"* – this way, the *ta'leeq* has something to be established upon, when it is met. However, if it was not attributed to his ownership, and he had said to her, *"You are divorced if you enter the house"*, and he then married her, the divorce will not occur.

Case study two

Allah says in the Qur'an, *"And whoever among you* ***cannot (find) the means to marry free, believing women****, then (he may marry) from those whom your right hands possess of believing slave girls.."* (Surah An-Nisa, ayah 25).

Because of the above ayah, according to Imam Shafi'i, if somebody has the ability to marry a free woman, it will prevent him from marrying a slave girl. This is because the Qur'an connects the marriage to a slave girl to one who does not have the ability to marry a free woman. Therefore, the moment one is able to marry a free woman – the condtion (*shar't*) is not found, and therefore he cannot marry a slave girl.

Similarly, according to Imam Shafi'i, there is no maintenance for a woman who has been given a *talaq ba'in* or three *talaqs* - unless she happens to be pregnant, as Allah has connected the maintenance with pregnancy in Surah At-Talaq. Therefore, if she is not pregnant, the *shart'* is not found, and this not being found is a barrier from the ruling coming into existence.

However, according to the Hanafi scholars, when the *shart'* is not found, it is still permissible to establish the ruling from other evidences (*daleels*). Therefore, the *shart'* not being found does not necessarily mean that the ruling cannot be found – as the *shart'* is just one aspect of the ruling. Therefore, the Hanafis look to establish the permissibility of marrying slave girls, and the maintenance of non-pregnant women through other ayahs in the Qur'an.

From the secondary rulings derived (*tawaabi'*) from this ayah, the *hukm* being connected on a noun that is *mawsoof* (described), further affects it. This is because a *mawsoof sifat* construction is similar in connecting a *hukm* to a *shart'* and *jadha* construction. Based on this, Imam Shafi'i says that it is not allowed for one to marry a slave girl from the *ahlul kitab*, as the *nas'* has connected the *hukm* to a believing slave girl – a *mu'minah*. Therefore, where she is not from the

‘*mu’minaat*’, the *nikah* with her will not be permissible, and the ruling (*hukm*) will be stopped where the condition is not found.

However, the Hanafis say that one can marry slave girls from other types – deriving their position from elsewhere.

Earlier, we saw that the Hanafis based the *hukm* on the condition being met, but Imam Shafi’i did not. Now we see that the principle has been switched by both positions. This goes to show that this process of deriving rulings is not so simple – and we should therefore humvle ourselves before the position of the *fuqaha*.

Part One: *Istithnaa* (Exceptions)

From the category of *bayaan at-taghyeer*, there is also the *istithnaa*.

The Hanafis scholars say that whatever is left over after the *istithnaa*, it is as though he has not spoken, except that which is remaining, and the conclusion is understood.

So, if someone said, *“Upon me is a thousand, except one hundred”*. Here, the Hanafis say it means, *“I owe nine hundred”*.

However, Imam Shafi’i says that the beginning of the sentence has been established as the cause for everything, but the *istithnaa* is preventing it from being carried out (similar to his opinion regarding *ta’leeq*). Therefore, as soon as he said the beginning – he was obligated to give a thousand, but the *istithnaa* (“except hundred”) stopped him from giving the thousand.

Example one:

In Muslim, a hadith tells us to not sell food for food, unless it is equal.

Here, because Imam Shafi’I says that the beginning before the *istithnaa* will come into effect – it means “do not sell food for food”, and therefore it is generally not allowed – other than the exception mentioned.

The conclusion of this is that one handful of food for two handfuls (*bay’ al-hasanah)* is unlawful, according to Imam Shafi’i, as it does not meet this exception of being ‘equal’.

However, according to the Hanafis, the transaction of the handful will not come under this, and will be allowed. Imam Abu Hanifah bases his decision on the final conclusion of the utterance – rather than what came first, and what came after. Therefore, the Hanafis understand that the meaning of the prohibition in this hadith is to restrict the *bay’* in order to tell us that we can buy and sell - but we have to be fair.

Thus, the Hanafis says that one should make sure that food is equal where it is possible to make it equal– so it does not become riba. But if it is in a situation where it is not possible, it does not fall under this ruling. The Hanafis say you can only measure equality from the measurement of half a *saa'*, but anything under that it is not necessary according to the Hanafis. This is based on *'urf*, as it is only a minute amount. For example, if your neighbour borrowed a pint of milk from you, you would not measure it exactly if returned, or returned at all. The principle is understood by the Hanafis more for the sake of fair trade.

From the categories of *bayaan at-taghreer*, there are also the following examples. However, some have argued that they are from the category of *bayaan at-tabdeel*.

If a man said to his wife, *"Upon me (alayya) is a thousand as a trust"*. Here, the word *"alayya"* (upon me) gives the meaning of a confession – so that something is obligatory upon him. However, when he added *"..as a trust"* – it shows that it is not obligatory upon him as a debt, but that somebody has left it with him as a trust, and now he is handing it back.

Similarly, if a man says, *"You have given me a thousand, and I have not taken it into my possession"*. Here, it originally seems as though he is in possession of the thousand, but when he says he has not taken it – it changes it to mean that it has not come into his possession.

If a man said, *"Upon me is a thousand, fake"* – it was initially giving the meaning of *"I owe a thousand of pure money"*, but by adding the word *"fake"* – it becomes a *bayaan at-taghyeer*.

Note: For those who consider these to be *bayaan at-tabdeel*, their opinions can be found in the relevant section using similar examples.

Rule: The *hukm* of *bayaan at-taghyeer* is that it is correct to change a wording, as long as it is changed straight away (*mawsoolan*). Similarly, it will not be correct to delay it (*mafsoolan*).

So, if you say, *"Upon me is thousand, as a trust"* – the phrase *"..as a trust"* has to be declared straight away. Similarly, if one said, *"You are divorced, if you enter the house"* – the clause of 'entering the house' has to be uttered straight away.

In the examples above – where the scholars have differed, if they are considered to be *bayaan at-taghyeer*, then the conditions can be done straight away. But if they are considered as *bayaan at-tabdeel* – it is not correct, as you cannot make any changes to a statement in a *bayaan at-tabdeel* according to the Hanafis.

Section Thirty-Four:
Bayaan Ad-'Daroorat

This is an 'inferred' *bayaan*, where the speaker has not specifically said something, but it is understood from his explanation, and the rulings can be derived from it.

Example one:

For example, Allah says, *"..But if he had no children and the parents [alone] inherit from him,* ***then for his mother is one third****.."* (Surah An-Nisa, ayah 11).

From this, you can derive that the mother will take one third, whilst indicating that the remaining two thirds will go to the father. In other words, the share is established between the parents, and the inferred meaning gives the share of the father.

Example two:

Based on this, the Hanafis have said that when two partners in business make clear that one is a 'silent' partner, and that he will recieve 40% of all profits, it is inferred that the other partner will receive 60% of the profits.

Example three:

In this way, if someone made a bequest for "Mr. A and Mr. B, for a thousand", and then he explains the share for A, it also infers the share for person B – even if he did not specify the amount literally.

Example four:

A husband gave one of his two wives – either A or B – divorce, without making it clear as to which one he is referring to. He then has relations with one of them, it will now become *bayaan* for *talaaq* for the other.

However, if one had two slave girls, and he freed one of them by saying, *"One of you is freed"* – if he were to then have relations with one of them, this does not mean that she is his still his slave girl. The reason is because it is still possible that he has freed the other, and this one has been freed and he has married her.

Section Thirty-Five: *Bayaan Al-Haal*

This is where the lawmaker sees a matter that is clear, and does not object to it – therefore, giving it a silent approval. Therefore, *bayaan al-haal* is the silent approval of the lawmaker. This silence is as though the lawmaker has said it is allowed.

Example one:

When one who has the right to know of a certain *bay'* – if he has knowledge of the *bay'* and he remains silent, then it is like an explanation that he is pleased with it.

Example two:

A young virgin girl (*bikr*) – whose 'silence' is considered as 'acceptance' for marriage – if she finds out that her *wali* has gotten her married, and she remains silent, it will be treated as though she has accepted it with words.

Example three:

A master sees his slave buying and selling in the market. If the master remains quiet, it will be considered as being similar to him giving permission. Therefore, the slave will now be permitted to engage in buying and selling. This is because slaves, children, and the insane are not normally allowed to engage in buying and selling. Thus, the silence also extends to the silence of the parent of a child.

Refusals

When a defendant refuses to take an oath in a court to prove his innocence - according to the students of Imam Abu Hanifah, he is confessing that he is guilty, as if he was not guilty, we would have taken an oath of his innocence. However, Imam Abu Hanifah is of the opinion that by refraining from the oath, it does not necessarily mean he is guilty – as it could be that he is not taking the oath as he does not want to used the name of Allah for a petty issue.

Note: In conclusion, we can see that the *ijma* is established through the *nas'* of some as clear evidence, and also through the silence of others – by indication.

Section Thirty-Six
Bayaan Al-'Atf

The word *'atf* means to 'connect' or 'join', by adding a letter *waw* (*harf 'atf*). If this in used in an ambigous sentence involving a measured or weighed item, it will now become an explanation (*bayaan*) for the ambiguity.

Example one:

If one said to another, *"Upon me is a hundred and a dirham"*, or, *"Upon me is a hundred and a kilogram of wheat"* - these are ambiguous sentences, as the 'hundred' can refer to anything. However, the second part (following the 'and') becomes an explanation for that which is before it. Therefore, it would be understood as 'one hundred and one dirhams', and 'one hundred and one kilograms of wheat'.

Rule: This *bayaan* gives the meaning that all of it is together.

Example two:

Similarly, if a man said, *"Upon me is one hundred and three cloths"*, or, *"..one hundred and three dirhams"*, or *"..one hundred and three slaves"*, it has now become an explanation that the word hundred is of the same category as that mentioned after the 'and'.

Note: For an item that cannot be weighed or measured, it cannot be used as an explanation. However, if there is a number before it – it can. For example, a slave cannot be measured, but by saying "three slaves", it gives it a meaning that allows it to make sense if "hundred" is added before it. According to Imam Abu Hanifah and Imam Abu Yusuf, for *bayaan al-'atf* to work, it has to be regarding something where one has to 'owe' something as an obligation – these are measured and weighed items. However, Imam Muhammad disagrees, and says that it can be for matters that are neither measured nor weighed, and the word after 'and' can be used as a *bayaan* regarding this principle.

Section Thirty-Seven
Bayaan At-Tabdeel

Similar to *bayaan at-taghyeer*, this category comes in order to 'alter' or to 'change' a sentence. However, in a *bayaan at-tabdeel*, it changes it in order to abrogate it. This is only something that is allowed to be done by the lawmaker, and not by human beings.

For an *istithnaa* to work (exclusion), it has to take away some from the majority, but to exclude the whole amount is called an 'abrogation' – and only Allah is allowed to do this. So, a man cannot give his wife *"three talaqs, except three talaqs"*, or a man cannot say, *"I owe you a thousand, except a thousand"*.

If one wants to retract the utterance of a confession, it will also not be valid. Therefore, if a man gives *talaq*, he cannot change his mind and retract it again. Similarly, one cannot free a slave and then retract his decision. This is because these are abrogations – and only Allah can abrogate these matters.

If a man says to another, *"I owe a thousand as debt"*, and then adds, *"It is fake"* – according to the students of Imam Abu Hanifah, this is actually *bayaan at-taghyeer.* Therefore, it has to be done straight away according to them. However, according to Imam Abu Hanifah, it is *bayaan at-tabdeel*, as when he had said, "Upon me is a thousand", it referred to pure money. And then, when he added, *"It is fake"*, he is actually trying to change his confession from real to fake money, and therefore abrogating his original confession.

According to Imam Abu Hanifah, if one said to another, *"Upon me is a thousand because of the value of this slave girl"*, and then he adds, *"I have not taken her into my possession"* – in this situation, if the slave girl is non-existent, it is considered as him trying to abrogate his confession. This is because one would only say 'owe' regarding something that is already in their possession. If however, she did pass away before she went into his possession, the transaction would be cancelled, and the payment would not be necessary.

Discourse Two:
The Sunnah

Section One:
Categories of Narrations

After the Qur'an, the next source of guidance for Muslims is the Sunnah. The Prophet (SAW) came and personified how mankind should live, and therefore his Sunnah becomes a source of law for us. In this regard, like the Qur'an, it is necessary to acquire knowledge about, and act upon the Sunnah. For those who have obeyed the Prophet (SAW), they have indeed obeyed Allah.

In the same way that the Qur'an has sections on *khass*, *'aam*, *mushtarak*, and *mujmal*, the same things are similarly applicable to the Sunnah. However, the only difference is that in hadith, we have to investigate as to whether it is established from the Prophet (SAW) or not. Thus, there is always a doubt as to whether it is from the Prophet (SAW) or not.

Because of this, a hadith is of three categorised in the following three types:
1) It has been authenticated, and established to be from him the Prophet (SAW) without any doubt, it is called *mutawaatir*.
2) Where there is a slight doubt, it is called *mashhoor*.
3) Where there is a doubt, it is called *ahad* or *khabar wahid*.

Note: One can see that the hadith classifications are different to that of the *muhadditheen*, as the *muhadditheen* consider anything other than a *mutawaatir* to be a *khabar wahid*. Similarly, the conditions of what factors are required for each classification are also different to that of the *muhadditheen* (see below). Furthermore, the *fuqaha* may decide to ignore a hadith if a judgment can be established through the Qur'an first, whereas the *muhadditheen* will still keep it if it is considered to be *maqbool* (acceptable).

Mutawaatir

This is a hadith where a group of people continuously narrate from another group of people, to the extent that we do not doubt it. This is because there are too many people involved for them to be involved in a lie, and it reaches us in the same manner.

For example, the transferring of the Qur'an is *mutawaatir*, as it has been narrated and memorised generation to generation. Also, the number of *ra'kah* in the *salaah*, as well as the *miqdaar* in calculating one's *zakaah*.

Mashhoor

The *mashhoor* is a hadith where it's beginning (Sahabi) is like a *khabar wahid*, and then in the second and third era, it became *mashhoor*. As soon as people started accepting it, it becomes like a *mutawaatir* until it reaches us. For example, doing *mas'a* over the socks, or stoning for adultery.

As one can see, this definition is different to that of the *muhadditheen*. This is because the Hanafi *fuqaha* look at the strength of a narration to derive rulings, instead of the number of narrators – and the Sahaabah (RA) are all considered without scrutiny.

Acting upon the *khabar wahid* is *wajib* is the *rawi* is a Muslim, *'adil*, *'dhabit*, sane, and the narration has to be *muttasil*.

Ahad

This is when one person narrates from one person, or one person is narrating from a group, or a group narrates from one person.

After the era of the Tabat Tabi'in (RH), even if hundreds of people narrate it, it does not matter - as it will not become a *mashhoor* in the same way.

Rule: The *mutawaatir* establishes *'ilm qat'i*, and therefore, it is clear-cut – so its rejection is tantamount to *kufr*. The *mashhoor* establishes *'ilm 'tamaaneenat* – so, even though it has a doubt, the truth is given precedence, and you are willing to give it the benefit of the doubt. The rejection of the *mashhoor* is considered to be a *bid'ah*. There is no difference amongst the *ulama* in regards to acting upon them both. The difference is only regarding the *ahad* hadith, and whether it is necessary to act upon it or not.

Section Two:
Categories of Narrators

How a narration is used for deriving rulings is also based upon whom it has been narrated from. In this regard, the Sahaabah (RA) are categorised into two categories.

Category one

In this category are the Sahaabah (RA) who are well-known for both their knowledge, as well as their *ijtihad*. The narrators in this category include (in no particular order): Abu Bakr (RA), Umar (RA), Uthman (RA), 'Ali (RA), Abdullah ibn Mas'ud (RA), Abdullah ibn Abbas (RA), Abdullah ibn Umar (RA), Zayd ibn Thabit (RA), Muadh ibn jabal (RA), Ai'sha (RA), and those who are similar to them.

Rule: Acting upon their narrations is better than to act upon *qiyas* – even when *qiyas* goes against their *ijtihad*.

Example one

According to the Hanafis, the ruling regarding *qahqaha* (laughing loudly in *salaah*) is that it breaks one's *salaah*. This is based on the narration of a Bedouin who had really bad eyesight stumbling and falling into a well, to which the Sahaabah (RA) who were praying at the time started laughing. After *salaah*, the Prophet (SAW) told those who had laughed to repeat their *salaah* and *wudhu*. Here, logic says that laughing loudly should not break one's *wudhu*, as it is not impure in any away. However, because it has been reported by a reputable person – Abu Musa al-Ash'ari (RA), it is accepted (Daraqutni, *Kitab At-Taharah*).

Example two

If *muhaadhat* (when a woman stands next to a man in *salaah*) occurs, the Hanafis say that the *salaah* breaks, even though it goes against logic. This is because there is a hadith narrated by Abdullah ibn Mas'ud (RA), saying that women should pray behind the men (Abu Dawud, *Kitab as-Salaah*).

Example three

Furthermore, logic says that *wudhu* should not break if one vomits, as it is more like spit and mucus as opposed to *najasa* like urine. But this is understood, as

there is a hadith that requires *wudhu* to be performed when one vomits, as narrated by Ai'sha (RA) (Ibn Majah).

Example four

There is a hadith by ibn Mas'ud that the *sajdah sahwa* is performed after the *salaah*, although logic says that it should be done before *salaah* itself finishes (Ibn Majah).

Category two

In this category are the Sahaabah (RA) who are well-known for their memory and piety, but not well-known for their *ijtihad*, or for their *fatawa*. For example, Abu Hurayrah (RA), Anas ibn Malik (RA) etc.

Rule: If a similar and authentic narration came to us from this category, we perform a test to see if it is in line with *qiyas*. If it goes against it, we will act upon the *qiyas*.

Example

Abu Hurayrah (RA) narrates that *wudhu* has to performed after eating anything burned on the fire (i.e. cooked). This goes against logic as it is an everyday matter, and it is accepted that *wudhu* will not break in this matter. Here, ibn Abbas (RA) asked Abu Hurayrah (RA) as to what would happen if one performed *wudhu* with hot water, to which he remained silent. Therefore, ibn Abbas (RA) rejected this based on *qiyas*. If ibn Abbas (RA) had a hadith himself, he would have narrated it, but instead he used *qiyas* (Ibn Majah, Tirmidhi, Abu Dawud).

Based on this, the *ulama* have left out the narrations of Abu Hurayrah (RA) regarding the rulings of *musarrat* (not milking camels in order to sell it with a large udder) based on *qiyas*. Here, a person can return a camel if it was miss-sold, but Abu Hurayrah (RA) narrates that he also has to give one *saa'* measure of dates in order to compensate for the milk he had used (Bukhari, Muslim, Abu Dawud, Tirmidhi, Nasa'i). The problem here is as to why this *saa'* has to be given using dates, as logic dictates that milk should be given in return instead. Therefore, because it goes against logic, logic is acted upon instead.

Section Three:
Conditions in Acting Upon a *Khabar Wahid*

In order to act upon a *khabar wahid*, we base it on the following conditions:

1) It does not go against the Book of Allah.
2) It does not go against a *mashhoor* hadith.
3) It does not go against the *dhahir* – the known norms in society.

Note: The reason why the *mutawaatir* ahadith are not mentioned here is because some say that there is no such thing as a *mutawaatir* hadith.

We have these conditions for the *khabar wahid* ahadith as there are many of these available to us – for a number of different reasons. Therefore, in order to use them as sources in deriving rulings, we cannot be negligent.

The reason for the increase in narrations is because of the three different types of people narrating them:

1) The *mu'min* Sahaabah (RA) who understood what the Prophet (SAW) was saying - as they were always around the Prophet (SAW).

2) The Bedouins who would occasionally come and listen to some of what the Prophet (SAW) had said, but did not fully understand. They would then return back to their tribe, and narrated words other than that said by the Prophet (SAW) by altering its meanings. They did not consider the meanings to have changed, but it had.

3) The *munafiq* whose hypocrisy was not known, and who narrated matters that they had not heard, whilst their audience considered them to be sincere. They in turn then narrated what the *munafiq* had said, and the narration became common amongst the people. Because of this, it is necessary to compare it with the Qur'an and the *mashhoor* ahadith, to ascertain whether it is correct or not.

Examples of a *khabar wahid* going against the Qur'an

Example one

The hadith literature mentions that whosoever touches his private parts should perform *wudhu* (Tirmidhi, Abu Dawud, Nasa'i, Ibn Majah). However, this goes against the following ayah: *"..Within it are men who love **to purify themselves**; and **Allah loves those who purify themselves**"* (Surah At-Tawbah, ayah 108). In this ayah, Allah is praising the people of Quba who use water for *istinja*. But in order to do this, they need to touch their private parts – and Allah is praising

this. Therefore, it cannot be *najasa* to touch it, as if it were - it would not have been allowed at all.

Example two

The hadith mention that any woman who gets married without the permission of her guardian, her marriage is *"batil, batil, batil"* (Tirmidhi). However, this seemingly goes against the Qur'an: *"..do not prevent them from* ***remarrying (yankihna)***.*."* (Surah Al-Baqarah, ayah 232). Here, the act of *yankihna* is connected specifically to the women, and not conjoined with their guardian. Therefore, it shows that the women may get married by themselves.

Example of a *khabar wahid* going against a *mashhoor* hadith

A *khabar wahid* says that a claimant can bring one witness as well as an oath as a substitute for the other witness (Muslim, Abu Dawud, Tirmidhi, Ibn Majah). However, a *mashhoor* hadith says that evidence is to be given by the claimant with two witnesses, whilst the defendant gives the oath (Tirmidhi, Ibn Majah).

Examples of *khabar wahid* going against the *dhahir*

The *dhahir* is something that is so obvious, that if it were *haram*, it would have been stopped. It does not have a defined technical meaning and can refer to anything that is well-known in society.

Rule: When a *khabar wahid* goes against the status quo of a *dhahir*, one cannot act upon it.

The reason for this is because if it had been known, the people in the first few generations would have acted upon it. Therefore, how could something that is *haram* suddenly become well known? These people were not lax in their practice of the Sunnah, and if they did not do this, why should we? Therefore, if the *ahad* is there and it was not acted upon previously – even if there was a need to act upon it – that in itself is a *daleel* that this *khabar wahid* is not correct.

Example one

When one person informs (literally a *khabar wahid*, not a hadith) another that his fiancé is haram upon him because they have both been breastfed by the same woman – it is not lawful for him to marry her, as they are foster siblings. Here, it is permissible for the man to act upon this, and marry her sister instead. This is because the *khabar* coincides with normative *dhahir* practice in society, and hence, is a possibility.

However, if somebody had provided information after the marriage that the *nikah* transaction between the two is invalid (*batil*) because of foster relations – the *khabar* will not be accepted, as it will be against the *dhahir*. This is because a *nikah* usually takes place as a public engagement, and if it were true – the truth would have come out already, if it were known.

Example two

Similarly, when a woman is informed that her husband has passed away, or that he has given her *talaq* whilst he is absent – it is permissible for the woman to rely on this information and marry someone else. This is because he has been absent for a long time, and there has been no luck in trying to contact or locate him. Therefore, the truth of the information is a possibility, and we can rely on this information.

Example three:

If the *qiblah* cannot be located, and a person is informed regarding it, then to act upon it is necessary and obligatory. This is because it is possible that he is correct in his direction, since he is a local resident.

Example four:

If one finds water and does not know of its state of purity, and a local person informs him that it is impure – he cannot do *wudhu* with it, and he has to do *tayammum* instead.

Section Four:
Where a *Khabar Wahid* Can Be Used as An Evidence (*Hujjat*)

A *khabar wahid* (a single person's statement) is a *hujjat* (evidence) in four situations:

1) Where it pertains to the rights of Allah, and it has nothing to do with punishment – such as praying *salaah*, fasting during Ramadan etc.

A *khabar wahid* will be accepted regarding this. For example, the Prophet (SAW) accepted the testimony of a Bedouin when it came to the sighting of the moon of Ramadan (Abu Dawud, Nasa'i).

2) Where it pertains to the rights of the servants, and involves a dispute between parties – i.e. "he owes me" etc.

Here, two people of pious and righteous character (*adil*) will need to testify. For example, if there is an argument as to what belongs to whom – two testimonies are needed to support the claims of the claimant.

3) Where it pertains to the rights of the servants, and does not involve a dispute.

Here, one person's testimony is accepted even if he is a *fasiq*. This matter pertains to normal everyday dealings.

4) Where it pertains to the rights of the servants, and involves a claim by one party.

Here, two people are needed, or one person who is pious and righteous (*adil*) - according to Imam Abu Hanifah. For example, to relieve someone of his employment, or to bar someone from a particular place, the party in authority may send either of these as representatives.

Discourse Three:
Ijma

Section One:
The Categories of *Ijma* Based Upon Who Performs It

In its literal sense, an *ijma* is to make a 'firm intention', and in this regard, it is the consensus on a matter from amongst the Sahaabah (RA), the *salaf*, the *ulama* etc. The *ijma* of this *ummah* after the Prophet (SAW) has passed away is in the secondary rulings of this *deen*, and it is considered as being a blessing for the *ummah*. Thus, it is obligatory to act upon.

The categories of *ijma* based upon who performs it

1) *Ijma Sareeh*: The *ijma* of the Sahaabah (RA) regarding a particular issue, being mentioned explicitly (nas'an). The *hukm* for this category is that it will be treated as being similar to an ayah from the Qur'an, and thus, considered as a *qat'i* proof.

2) *Ijma Sukuti*: Where there is an explicit *ijma* from some of the Sahaabah (RA), whilst others have remained silent (sukoot?). The *hukm* of this category is that it is like a *mutawaatir* report.

3) The *ijma* of latter day scholars, where the opinion of the *salaf* have not been mentioned of a secondary issue i.e. a contemporary issue such as IVF etc. The *hukm* of this category is that it will be treated like a *mashhoor* report.

4) An *ijma* on one of many opinions from amongst the *salaf* on a particular issue. The *hukm* of this category is that it will be treated as a *sahih khabar wahid*.

The criticism here, according to Shaykh Akram Nadwi, is that there is no such thing as an *ijma sareeh*. Even with the Sahaabah (RA), their *ijma* was always a delivery of a *fatwa*, while the rest remained silent. The very best example of an *ijma* amongst them is regarding the *khulafa* of Abu Bakr (RA), but even here, Sa'ad ibn Ubadah (RA) refused to give *bay'ah*. Despite this, the people still accepted Sa'ad, with Umar (RA) telling him to leave the city if he did not like them, but not one person called him a *kafir* (even though denying an *ijma sareeh* would warrant such a thing). Thus, we can see that even with the Sahaabah (RA), the *ijma* is that of *ijma sukuti* – and the only type of *ijma* ever understood.

When *ijma* is performed, whose opinions will we take into consideration?

We will take into consideration the opinions of those Imams who are known for their understanding of the legal rulings (*fuqaha*). We will not take into consideration the views and consensus of the laypeople, or the *mutakallimeen*, or the *muhadditheen*. The last two groups base their opinions only in relation to their particular field, but their knowledge in its application to derive rules for *fiqh* is not the same as a *faqih*.

Section Two:
The Categories of *Ijma*
Based Upon The Status of Its Proofs

In this categorisation, there are two types of *ijma*:

1) ***Murakkab***: This is a situation where the *ulama* agree on a ruling, but they differ regarding the cause (*illah*). For example, if somebody in a state of *wudhu* vomited, and then he touches a woman – it is agreed that his *wudhu* will break. Here, according to Imam Shafi'i, the *wudhu* will break because he touched a woman, but Imam Abu Hanifah says the *wudhu* will break because he has vomited.

2) ***Ghair Murakkab***: This is when two or more Imams agree on a ruling, and they also agree on the cause (*illah*) of the ruling. For example, all of the *ulama* agree that anything which exits the private parts will break one's *wudhu*. They also agree that it breaks because of something which has come out of the private parts. Therefore, both the rule and its cause is agreed upon.

Rule: Regarding the *mukarrab*, its ruling is that if it becomes apparent that one of the two *illat* is *fasid* (wrong, corrupt, weak), then this form of *ijma* does not remain as an evidence anymore. So, if the vomiting or touching of a woman is not found, it is not an *ijma* anymore – and becomes an evidence for one opinion only. Therefore, if we were to establish that vomit does not break the *wudhu* – then Imam Abu Hanifah would not be able to say that the *wudhu* has broken.

The doubtful *illah* is doubtful in both situations because of there being a possibility of Imam Abu Hanifah being correct regarding his opinion of touching a woman, and wrong regarding his opinion of vomiting. And vice versa. Thus, because of the *illah* being *mawhoom* (we will never know who was correct in his opinion), this form of *ijma* would not be considered as a *batil ijma* – even though it technically can. However, in a *ghair murakkab* – because there is no danger of an *illah* being invalid or corrupt, it can never be *fasid* and incorrect.

The conclusion here is that it is permissible for an opinion from an *ijma* to be removed because of there being a corruption in its *illah*. Here, because a ruling was given because of an *illah*, the detection of its corruption will invalidate the *hukm* of the ruling itself.

Below are some examples of how a *fasid illah* can cause a *fasid hukm*:

Example one

If a *qadi* passes a judgment, after which, the witnesses wish to retract their statement - the testimony will now become invalid, but the claimant will still lose what he had lost in the judgment. However, the two witnesses will have to pay the claimant a compensation for their lie.
Example two

The share of money for new Muslims (who were given a share of the *zakaah*) will be annulled because of the finishing of the *illah* (the *illah* was so that it can initially help them remain as Muslims). But now that this *illah* is non-existent, the *zakaah* will no longer be given to them.

Example three

Similarly, the share of booty for the family of the Prophet (SAW) will be annulled, because of the *illah* coming to an end. They received it because the Prophet (SAW) was there, but now that he is not here anymore – his family will not receive further booty as a result.

Example four

If someone were to wash his impure clothes with vinegar (accepted by Hanafis), and the impurity was removed, the clothing will become pure because the cause of the impurity has gone. Because of this, we can derive the difference between the minor and major difference of the states of impurity. As for that which can be cleaned by vinegar - this ruling is allowed, but it does not allow for one to do *ghusl* in it. The way to clean one's self from a major state of impurity is with pure water.

Section Three:
Where A Principle For One Ruling is Used For a Separate Ruling (*‘adam al-qa’il bil fa’sl*)

This is a type of *murakkab* known as *‘adam al-qa’il bil fa’sl* – where one ruling is established, causing another to be automatically established as a result.

Rule: This is only considered as evidence if the base *usul* of the differences in both situations are the same. In other words, where an *usul* is agreed upon, the varying *furu* matters derived from that *usul* is agreed upon automatically

For example, according to Imam Abu Hanifah, it is permissible to make an oath to fast during 10th *Dhul Hijjah*, and that a *bay’ al-faasid* transaction gives the benefit of ownership. Here are two rulings, in which the same *usul* is used – that where the *shari’ah* says you cannot do something, doing it will still establish its result. This process of one principle extending to another is called *‘adam al’qa’il bil fa’sl*.

However, where the base *usul* of the differences are different, it will not be considered as evidence, and one will not establish the other. For example, fasting on 10th *Dhul Hijjah* will not prove that urine breaking *wudhu* – these are both based on completely different *illat*.

However, below are examples of the same principle (*usul*) being understood differently, and therefore resulting in different rulings (from the section of *bayaan at-taghyeer*). These examples are a type of *ijma*, as when a scholar agrees on one opinion, he is also silently approving the opinion of the other scholar:

Case study one

The Hanafi scholars say that when a condition (*ta’leeq*) is attached to a ruling or command, it will only come into effect when the condition is found and not before. In contrast, Imam Shafi’i says that the *ta’leeq* is effective straight away, and the *shart’* not being found is only a barrier from a ruling that has already been established.

Therefore, if a man says to a strange woman, *“If I was to marry you, then you are divorced”*. Or, if a man said to another man’s servant, *“If I become your owner, then you are now freed”* – Imam Abu Hanifah says that it would still come into effect if the condition of marriage or ownership is ever met.

However, according to Imam Shafi’i, the conditions will be *batil* and annulled because they are being uttered to people whom the man has no rights over. Thus, rendering his words meaningless. The *ta’leeq* is the connecting of a cause to a situation, and therefore the divorce will not be correct – as there is no connection between a ‘*talaq*’ and a ‘strange woman’.

Case study two

Regarding a *hukm* that is connected upon a noun that is *mawsoof* (described), Imam Abu Hanifah says that the *sifah* does not have to be met for the ruling to occur. However, Imam Shafi'i says that the *sifah* becomes a *shart'* (condition) in such a case. Due to this, they have differed regarding the following ayah:

"And whoever among you ***cannot (find) the means to marry free, believing women,*** *then (he may marry) from those whom your right hands possess of believing slave girls.."* (Surah An-Nisa, ayah 25).

Because of the above ayah, according to Imam Shafi'i, if somebody has the ability to marry a free woman, it will prevent him from marrying a slave girl. But for the one who meets this condition – he must only marry a believing (*sifah*) slave girl, as the *nas'* has connected the *hukm* to a believing slave girl – a *mu'minah*. Therefore, where she is not from the '*mu'minaat*', the *nikah* with her will not be permissible, and the ruling (*hukm*) will be stopped where the condition is not found.

However, according to the Hanafi scholars, when the *shart'* is not found, it is still permissible to establish the ruling from other evidences (*daleels*). Therefore, the *shart'* not being found does not necessarily mean that the ruling cannot be found – as the *shart'* is just one aspect of the ruling. Therefore, the Hanafis look to establish the permissibility of marrying slave girls through other ayahs in the Qur'an. Further to this, the Hanafis also say that one can marry slave girls from types other than the *mu'minaat* – once again, deriving their position from elsewhere.

Rule: As mentioned previously, when two rulings are not governed by the same *usul*, the rulings will not transfer from one to the other. For example:

One ruling says that vomiting will break one's *wudhu*, and another ruling which says that a *bay' al-faasid* transaction is still valid in giving the benefit of ownership. Here, the ruling for one cannot be carried over to apply to the other, as the principles in deriving both rulings are completely different.

If a *furu*' is correct of one principle – it only points to the *usul* for only that particular ruling. It does not establish the correctness of another *usul* in order to derive a *furu'* from there. Therefore, when we establish that vomit breaks wudhu, it does not establish that bay' al-faasid breaks a transaction.

Similarly, Imam Shafi'i says that touching a woman will break one's *wudhu*, but the Shafi'is cannot use this to say that it is the evidence for *wudhu* breaking due to vomiting – as the principles for deriving both was different. Here, please note that the Shafi'is do not consider vomiting to break one's *wudhu*.

Section Four:
The Obligations On The *Mujtahid* In Deriving Rulings

It is *wajib* upon a *mujtahid* to derive the ruling for a situation from the Qur'an first, and then the Sunnah – either the clear text (*sareeh nas'*) and the indirect text (*dalalat an-nas'*), as there is no right to act upon *qiyas* where it is possible to act upon the Qur'an or the *nas'* of the Sunnah.

Because of this, when the direction for the *qiblah* becomes unclear for a person, and he is given information regarding it by a local person, it is not permissible for him to investigate the matter any further. Similarly, if traveller was to find water, and a just person told him that it is impure, it is not permissible for him to do *wudhu* with it. Thus, a *khabar wahid* will be given preference over one's own logic or *qiyas* in both situations.

Based on this, acting upon logic is less than acting upon the *nas'*. This means that if there is a direct conflict between the two – acting upon the *nas'* is far better than acting upon *qiyas* and logic. This is because acting upon an *ash-shubhat bil maha*l (the Qur'an or hadith is unclear regarding the lawfulness or unlawfulness of a matter) is better than acting upon an *ash-shubhat fee adh-dhann* (doubt raised from one's own mind and logic).

For example, if one were to have sexual relations with his son's slave-girl, he would not be stoned - as the hadith mentioned below says that one and his wealth belongs to his father:

"Jaabir ibn Abdullah (RA) said that a man said, "O Messenger of Allah (SAW), I have wealth and children, and my father wants to take all my wealth (to spend it on his own needs) and leave nothing." The Prophet (SAW) said: "You and your wealth belong to your father." (Ibn Maajah).

This hadith implies that one has ownership of his son's slave girl, and can have relations due to this – even though it is not clear. Therefore, it forbids acting upon the rule of being punished for committing the *haram* of having relations with ones son's slave girl. This is even if he knew it was *haram* for him to have relations with her – based on *ash-shubaat bil mahal*. If she was to now fall pregnant, the child's lineage will also be established from the father – as the doubt regarding his ownership is established through the same hadith.

An example of *ash-shubhat fee adl-dhann* is when one merely says, *"I thought it was like this*" etc. without any reason through a hadith or proof. Therefore, in this situation, if the father tried to say that he knows it is *haram*, and therefore it should not establish fatherhood over the child, his logic would be deemed worthless.

Similarly, if a son was to have intercourse with his father's slave girl, the son's *dhann* (his views) would be taken into evidence when it comes to whether that

act was lawful for him or not – depending on which, he will either be let off or stoned/lashed. This is only if he genuinely thought that it was something that he was allowed to do – perhaps as he normally takes things from his father's property on a regular basis. If however, he knew that it was *haram* – he would be punished. This is because there is no hadith or text to say that the father's wealth belongs to the son.

Section Five:
The Role of A *Mujtahid* When Two Evidences (*Daleels*) Are Seemingly Contradictory

If the contradiction is seemingly understood between two ayahs, the *mujtahid* will incline towards the Sunnah, in order to try and reconcile between both. After that, if there is still a contradiction, he will look at the practice and statements of the Sahaabah (RA) in order to try and reconcile them, as well as looking at clear *qiyas*. If however, two *qiyas'* contradict each other in reconciling both, he will try and exert effort in order to act upon one of them. This is because there is no other *shari' daleel* other than the *qiyas* for him to turn towards afterwards.

Based on this, the Hanafis say, that if a *musaafir* has two buckets of water – one pure and one impure, and he is not sure as to which is pure, he cannot perform an investigation, as there is a *shari' daleel* for an equivalent – *tayammum*. If he also has two sets of clothes with him – one pure and one impure, he will be allowed to investigate through logic in order to find out which is pure – as there is no equivalent for it in the *shari'ah*.

Rule: It has been established from this example, that acting upon *ray'* and logic is only when there is no other *daleel* found from the sound texts, and therefore, it is a last resort.

However, if one performs an investigation into a ruling and then put it into practice, after which a doubt occurs for another possibility to be valid – the act itself will not be cancelled. Furthermore, whether he can change his mind on his choice of opinion is also dependant upon the ruling itself.

For example, when someone investigates between two pieces of clothing, and performs *dhuhr salaah* with one of them, and then his doubt changed his mind to the other piece of clothing during the time for *'asr* – it is not permissible for him to do *'asr* with the second one, as the first one had become 'emphasised' as 'pure' by acting through it.

However, if it was regarding the *qiblah*, he is allowed to change his opinion - as the *qiblah* is from those matters that can change in direction. These matters are similar to the rulings regarding abrogation, as seen with the abrogation of the direction of the *qiblah* from Al-Aqsa to Makkah.

In *Jami' Al-Kabeer* of Imam Muhammad, it mentions a similar ruling regarding the *takbeers* of the *'Eid salaah*. In this matter, the Hanafis say that there are six extra *takbeers* in the *salaah* (three in each *raka'ah*), whilst Imam Shafi'i says that there are twelve extra *takbeers* (seven in the first *raka'ah*, and five in the second). Therefore, if a *mujtahid* were to perform three *takbeers* in the first *raka'ah*, and then conduct *ijtihad* mid-*salaah*, resulting in five *takbeers* in the second *raka'ah* – it is allowed to be done, as it is also a ruling that can be altered and changed.

Discourse Four:
Qiyas

Section One:
Evidences For The Validity of *Qiyas*

Qiyas is one of the sources of evidence (*hujjat*) in *shari'ah*, and it is necessary to act upon it in the absence of a higher *daleel* (Qur'an, Sunnah, *ijma*). There are many ahadith that notify us of these, such as:

"When the Messenger of Allah (SAW) intended to send Mu'adh ibn Jabal (RA) to the Yemen, he asked: 'How will you judge when the occasion of deciding a case arises?' He replied: 'I shall judge in accordance with Allah's Book'. He asked: '(What will you do) if you do not find any guidance in Allah's Book?' He replied: '(I shall act) in accordance with the Sunnah of the Messenger of Allah (SAW)'. He asked: '(What will you do) if you do not find any guidance in the Sunnah of the Messenger of Allah (SAW) and in Allah's Book?' He replied: ***'I shall do my best to form an opinion and I shall spare no effort.'*** *The Messenger of Allah (SAW) then patted him on the breast and said: 'Praise be to Allah Who has helped the messenger of the Messenger of Allah to find something which pleases the Messenger of Allah'"* (Abu Dawud, Vol. 24, 3585).

"Ibn Abbas (RA) narrates that a woman from the tribe of Juhainah came to the Prophet (SAW) and said: "My mother had vowed to perform Hajj but she died before fulfilling her vow, should I perform Hajj on her behalf? The Prophet (SAW) said: ***"Yes, perform Hajj on her behalf. Would you not pay off any debts your mother might have left behind upon her death? Pay off what you owe to Allah, for He is most deserving of settlement of His debt"*** (Bukhari). Here, the Prophet (SAW) used *qiyas* to make an analogy, and joined the obligation of *hajj* for the deceased person, along with her financial rights in order to compare and deduce the ruling. He also pointed to the *illah* (the cause which governs the two together) being *qadha* – so they both have to be fulfilled.

"Mulazim bin Amar narrates from Abdullah bin Badar, from Qaiys bin Talq bin Ali, from his father, from the Prophet (SAW): 'he was once asked about a person who touches his male organ during prayer to which he replied: is it not a part of you?" (Nasa'i, Abu Dawud, Tirmidhi). Here, a relation is made between the private parts with other parts of the body – therefore, since *wudhu* is not done for touching other bodily parts, the same is understood for touching the private parts.

Furthermore, ibn Mas'ud (RA) was asked regarding the status of a woman whose did husband had not stipulates a dowry, and he passed away before consummating the marriage. Here, he pondered on the situation for a month in order to deduce the appropriate ruling and mentioned that he will exert effort to come to his conclusion. He further mentioned that if it were right, it was from Allah, and if it were wrong, it is from *ibn Umm 'abd* (his *kunya*). He eventually concluded that she would receive a *mahar mithl*, without any increase or decrease.

Section Two:
Conditions Required For *Qiyas* To Be Correct

Qiyas is an analogic deduction of a new matter that has newly arisen, where no ruling has been given for it in the other authentic sources. Here, the *faqi* would search for a similar instance, and then extend the rule to apply to the new case.

Parts required to perform *qiyas*

In order to perform *qiyas*, the following four parts are key:

1) *Asl*: The original text for a similar case.
2) The original text is examined to deduce why the ruling is how it is, and it must be clear that its ruling is not categorically specific for that particular case only.
3) The new case is brought forward, for which a ruling is sought.
4) *'Illa*: The similarity between the two cases is examined, in order to see if it warrants the same ruling.

Conditions in performing *qiyas*

One must note that when a ruling is deduced from another ruling, there are five conditions that need to be found in order for the *qiyas* to be valid and correct. These are:

1) It cannot go against the clear text (*nas'*).
2) It cannot change an original ruling from the rulings of *nas'*.
3) The *usul* being used for deriving *qiyas*, cannot be something which goes against logic.
4) The *illah* (cause) being derived is for a *shar'i* ruling, and not to establish a linguistic ruling.
5) The secondary ruling cannot be such that it already has a *nas'* to it, since there is no need to do *qiyas* if it does.

Examples for these are given below.

1) Example of where a *qiyas* goes against a *nas'*

A scholar was asked regarding *qahqaha* (laughing loudly in *salaah*), to which he replied that it breaks one's *wudhu*. The questioner then objected, and pointed out that if somebody were to slander a chaste woman in *salaah*, his *wudhu* will not break (even though his *salaah* breaks). Therefore, why is it that the loud laughing will break one's *wudhu*, when it is less in rank?

This is an example of a *qiyas* which goes against a clear *nas'* – as the hadith of the Bedouin who fell in the well, and resulting in the Sahaabah (RA) laughing in *salaah*, demonstrates that the Prophet (SAW) had asked for them to perform *wudhu* again. Therefore, even though it makes logical sense - we leave out the *qiyas* in place of the clear *nas'*.

2) Example of a *qiyas* changing the ruling (*hukm*) of a *nas'*

Logic says that a *niyyah* (intention) is a condition for *wudhu*, as it is with *tayammum* (this is the view of Imam Shafi'i). However, here the Hanafis say that Imam Shafi'i is understanding the ayah of *wudhu* from something that is *mutlaq* (non-conditional) into something that is *muqayyad* (conditional):

"O you who have believed, when you rise to (perform) prayer, wash your faces and your forearms to the elbows and wipe over your heads and wash your feet to the ankles.." (Surah Al-Ma'idah, ayah 6).

Here, the *faraid* of *wudhu* are mentioned clearly in the Qur'an, and it does not mention a requirement of a *niyyah*.

Similarly, Allah says in Surah Al-Hajj, *"Then let them end their untidiness and fulfill their vows and* ***perform Tawaaf around the ancient House****"* (ayah 29). Here, Allah in a straight-forward (*mutlaq*) instruction stipulates the need for *tawaaf* as it is during the ritual of *hajj*. However, there is a *khabar wahid* which adds a condition of the need to have *wudhu* during the *tawaaf*. Therefore, the two are reconciled by the Hanafis to say that the *tawaaf* is *fard*, whilst the need to have *wudhu* during it is *wajib*. However, Imam Shafi'i says that to have *wudhu* is a requirement – which is why the Hanafis say that he is understanding an ayah that is *mutlaq* (non-conditional) into something that is *muqayyad* (conditional).

3) Example of where the *usul* which is being derived from, is going against logic

If the primary *usul* that is being looked into (in order to help deduce a ruling) goes against logic itself, it cannot be used.

For example, a hadith in Abu Dawud mentions that the Prophet (SAW) once did *wudhu* in *nabeedh at-tamar* (water in which dates had been dissolved). Here, the scholars differed on what this means, so the Hanafis say that since it is against logic (as the water is not pure), we can act upon it, but we cannot use it to derive *furu'* (secondary rulings). Therefore, if somebody was to say that *wudhu* is permissible with water in which other things have been dipped - it will not be permissible.

Similar, if somebody suffered an injury in *salaah*, and he continued his *salaah* by reasoning it *binaa,* it will not be allowed. This is because *binaa* - although against logic - has been narrated in a hadith in Ibn Majah. Note: *binaa* is the condition where someone passes wind or suffers a nosebleed in *salaah*. In these situations,

he is allowed to go away, clean up, do *wudhu*, and continue his *salaah* where he had left off.

A third example is a hadith in Abu Dawud, which states that if water enters into two containers – then it becomes pure. Here, Imam Shafi'i states that if two containers of impure water are mixed together, they both become pure – even if they are separated again. The Hanafis do not accept this, as the original hadith itself goes against logic.

4) The *illah* (cause) being derived is for a *shar'i* ruling, and not to establish a linguistic ruling.

According to the Hanafis, *khamr* is something that is only produced from grapes or dates. Therefore, the mention of the unlawfulness of *khamr* in the Qur'an is a reference to that only.

However, Imam Shafi'i says that *khamr* is called *khamr* because it veils the *'aql* (like a *khimar*). Therefore, anything which also veils the *'aql* is also called a *khamr*. Because of this, if someone is convicted of taking drug, he will face the same punishment as the one who is convicted of drinking alcohol – eighty lashes.

In this, the Hanafis disagree and say that the *shari'ah* is only enforcing a punishment for the mentioned crime only – and therefore, the same punishment will not apply. The Hanafis say that Imam Shafi'i is understanding the language too literally, and generalising something that is not mentioned as being general. Thus, the ruling (*hukm*) will now connect it to things other than the intended meaning of the word *khamr* in the Qur'an.

Another example is that of a *sariq* – who is called that because he has taken someone else's property in a 'discreet' manner. Therefore, the Hanafis say that a *nabbash* (grave robber) should not be considered in this situation as being the same as a *sariq* - and his hands should not be cut. In this situation, Imam Shafi'i is of the opinion that a *nabbash* should also face the same punishment.

Here, the Hanafis mention that the *shari'ah* has already given the description of a *sariq* as being caused by a specific type of condition being met. Therefore, if we now connect the meaning to something that is broader than as intended, then the meaning will be transferred onto people who are not the type that are mentioned in the Qur'an, but in a differently intended meaning of a *sariq*.

As far as the Hanafis are concerned, these are examples of *qiyas* being done on language, resulting in the understanding of the words too literally – even though the words have been mentioned in a specific way. For example, the Arabs refer to dark horses as *adham*, and red horses as *kumayt*. Therefore, if we were to use them literally, can we call dark people *adham*, or refer to red clothing as *kumayt*, since the same *illah* (cause) has been found?

To do this will make many *shar'i* rulings *batil* (invalid) – even ending up with many innocent people having their hands cut off if taken too literally. All they would have had to do was take any item from another person discreetly, and they would immediately become classed as a *sariq*.

5) The secondary ruling cannot be such that it already has a *nas'* to it, since there is no need to do *qiyas* if it does.

Imam Shafi'i is of the opinion that in paying the *kaffarah* (expiation) for *dhihar* or breaking an oath, the freeing of a disbelieving slave is not allowed – by reasoning it with the *kaffarah* for killing a believer (where the freed slave has to be a believer).

However, the Hanafis say that a disbelieving slave can be freed, as the *nas'* of the *kaffarah* is *mutlaq* (unconditional). Therefore, the *nas'* is already there, and one cannot add to it through *qiyas*:

"Allah will not impose blame upon you for what is meaningless in your oaths, but He will impose blame upon you for (breaking) what you intended of oaths. So its expiation is the feeding of ten needy people from the average of that which you feed your (own) families or clothing them or ***the freeing of a slave****.."* (Surah Al-Ma'idah, ayah 89).

Furthermore, Imam Shafi'i says that if *dhihar* is done, the full *kaffarah* needs to be done before one can resume intercourse with his wife. However, from the three possible ways that are stipulated, the feeding of sixty poor people does not say it has to be fully completed before one can engage in intercourse with his wife:

"And those who pronounce dhihar from their wives and then (wish to) go back on what they said - then (there must be) the ***freeing of a slave before they touch one another****. That is what you are admonished thereby; and Allah is Acquainted with what you do. And he who does not find (a slave) - then a* ***fast for two months consecutively before they touch one another****; and he who is unable - then the* ***feeding of sixty poor persons****. That is for you to believe (completely) in Allah and His Messenger; and those are the limits (set by) Allah. And for the disbelievers is a painful punishment"* (Surah Al-Mujadila, ayahs 3-4).

Here, Imam Shafi'i says that if he had fed thirty people before having intercourse, he has to start again. In contrast, the Hanafis say that he does not, as its timing has not been particularly specified in the ayah itself.

In another example, Imam Shafi'i says that it is permissible for a *muhsar* (one who is prevented from performing *hajj* or *umrah*, and therefore has to sacrifice an animal) to relieve himself from his state of *ihram* through fasting, by analogising his situation to that of a *mutamatti'* (one who does both the *hajj* and *umrah* together, and has to sacrifice an animal. If he is unable, he will have to fast three days before the *hajj*, and seven days when he returns).

However, the Hanafis object to this by saying that the ruling is already given in the following ayah, and therefore the *nas'* already exists:

*"And complete the Hajj and 'umrah for Allah. But **if you are prevented, then (offer) what can be obtained with ease of sacrificial animals**. And do not shave your heads until the sacrificial animal has reached its place of slaughter.."* (Surah Al-Baqarah, ayah 196).

Furthermore, if a *mutamatti'* did not perform his three fasts before the *hajj*, Imam Abu Hanifah says that he will have to give a penalty (*damm*). However, Imam Shafi'i says that that fast can be done afterwards in the same way as the *qadha* fasting of Ramadan.

Section Three:
The *Shar'i* Definition of *Qiyas*

What is the *shar'i* definition of *qiyas*?

It is the connecting of a *hukm* (ruling) on an issue where a *nas'* does not exist in order to give it a legal ruling, based on a cause (*illah*) that is then transferred over from the *nas'* of the initial source.

For example, the Hanafis say that the *illah* (cause) of *khamr* being *haram* is that it intoxicates its drinker. Because of this, drugs are also classed as *haram* - as it also intoxicates. However, as mentioned earlier, the Shafi'is consider drugs to be *haram* because they consider the word *khamr* itself to also refer to drugs.

These initial *illahs* can be derived from the following four sources:
1) The Qur'an
2) The Sunnah
3) *Ijma*
4) *Ijtihad*/*Istinbat'*

Examples for these are given below.

Examples from the Qur'an

Those who frequently visit a residence are still told to take permission to enter a private chamber during three specific times: during *zawwal*, during *fajr*, and after *isha* – as mentioned in Surah An-Noor:

"O you who have believed, let those whom your right hands possess and those who have not (yet) reached puberty among you ask permission of you (before entering) at three times: before the dawn prayer and when you put aside your clothing (for rest) at noon and after the night prayer. (These are) three times of privacy for you. There is no blame upon you nor upon them beyond these (periods), for they continually circulate among you - some of you, among others. Thus does Allah make clear to you the verses; and Allah is Knowing and Wise" (Surah An-Noor, ayah 58).

For these people, they do not have to take permission outside of these times - as they are frequent visitors, and therefore it is difficult for permission to be sought at every occasion.

The Prophet (SAW) used the *illah* from this ayah, to analogise that the leftover water from that drank by a domesticated cat is not impure – even though it is logically *haram*. Therefore, even though the cat is impure to consume, the cat is still classed as those that frequently visit (as a *kathrat a't-'tawaf)*.

In another example, the *shari'ah* tells us that a *musaafir* and an ill person do not have to fast in Ramadan – so that they are able to have some ease, and do what is more convenient and easier for them:

"The month of Ramadan (is that) in which was revealed the Qur'an, a guidance for the people and clear proofs of guidance and criterion. So whoever sights (the new moon of) the month, let him fast it; and ***whoever is ill or on a journey - then an equal number of other days. Allah intends for you ease and does not intend for you hardship*** *and (wants) for you to complete the period and to glorify Allah for that (to) which He has guided you; and perhaps you will be grateful"* (Surah Al-Baqarah, ayah 185).

Based on this ruling, Imam Abu Hanifah says that the *shari'ah* has allowed this concession for the *musaafir* and the ill, and therefore he can decide not to fast for a certain day (e.g. 1st Ramadan 2014), but use that day (1st Ramadan 2014) to fast an expiation for a fast that he had missed from the Ramadan of the previous year (e.g. 3rd Ramadan 2013). Here, the other fast (*qadha* of 3rd Ramadan 2013) will be accepted, and he can repeat his missed fast (1st Ramadan 2014) at a later date.

Examples from the Sunnah

In a hadith in Abu Dawud, the Prophet (SAW) mentioned that *wudhu* is not upon one who falls asleep whilst standing, sitting, or in state of *ruku* or *sajdah*, but for the one who slept whilst lying down, as his limbs will relax and allow a greater chance for breaking wind.

Here, because he makes the 'relaxing of the limbs' as the *illah* (cause) for *wudhu* breaking, the *hukm* can now been transferred to someone leaning against something or reclining. Therefore, if somebody were to sleep whilst leaning or reclining – the secondary rulings dictate that his *wudhu* will now break, as his limbs would have relaxed in the same as if he were to lie down.

Similarly, the *illah* can also be transferred to someone who is either unconscious and/or intoxicated – as their limbs will also become relaxed.

In another hadith in Tirmidhi, the Prophet (SAW) mentioned that a woman who is in a state of *istihaa'da* (surplus bleeding), she may perform *wudhu* and pray *salaah* – even if the bleeding is falling on the mat, as it is the blood of a vein which has burst. Here, the Prophet (SAW) has made the continuous 'flowing of blood, due to a burst vein' as an *illah* for allowing one to perform *salaah*, and its *hukm* will be transferred to similar situations, such as *hijama* (cupping).

This is because, in both cases, the person would have become classed as a *ma'dhoor* – someone who is unable to remain in the state of purity long enough to perform *salaah*.

Examples from *Ijma*

The *ulama* have held a consensus (*ijma*) that immaturity is an *illah* for a father to have authority over his son's rights i.e. such as to marry him off (known as *wilayatul ijbaar*). Therefore, the ruling will also be transferred and established if the *illah* (of immaturity) is also found for an immature girl - and the same rights will be given to her father.

However, when the son reaches puberty, this is the *illah* for the father to not have any rights over his son. Similarly, the rule will also be transferred to a mature girl when she reaches puberty.

In another example, the flowing of blood is the *illah* (cause) for *wudhu* to break for a *mustahaada* woman, and this ruling will be transferred over to cases which also involve the flowing of blood, such as a nose bleed. Of course, if they both qualify as a *ma'dhoor*, due to excessive bleeding – they may perform *wudhu* and pray *salaah*.

Note:

The *qiyas* of this type can be categorised into two types, based on the following criteria:

1) The secondary situation is from the same category as the primary situation from which the initial ruling is sought.

2) The secondary situation is from a different category to the category of the primary situation from which the initial ruling is sought.

Examples of the first category:

'Immaturity' is an *illah* (cause) for the responsibility of a boy's marriage to be placed under the authority of his father. This is the 'primary ruling', which can then be extended to a 'secondary ruling' that also places the authority of immature girls to their father. Here, the two rulings are based on the same *illah* - immaturity. Therefore, once the boy or girl reaches a mature age – this becomes the *illah* for his/her father to not have authority over them anymore.

In another case, the 'regular visiting' of a house by a domesticated cat is regarded as the *illah* in allowing its leftover water to be considered as being 'pure'. Because of this *illah*, this primary ruling will also be transferred to other domesticated pets, and the impurity of their leftover water is also lifted (as secondary rulings).

In the above two examples, the category from which the primary rule is deduced, as well as the secondary rule to which it is applied, are both of the same category.

The *hukm* of this category is, that though difference can be found in the subjects, this type of *qiyas* is valid. This is even though the primary and secondary rulings of the subjects may be different in other rulings due to a different *illah*. However, because the *illah* in this situation is shared, neither the primary or secondary rulings will end.

Examples of the second category:

The concept of 'regular visiting' is an *illah* for those who regularly come into a house (i.e. slave girls) to not have to seek permission to enter into a house every time they visit (this does not include the forbidden times). Here, this primary rule is due to the issue of 'difficulty' caused if one had to seek permission with every entry, and this has been transferred over to deduce a secondary ruling - in which, the leftover water of domesticated pets is declared as being 'pure'.

In another example, 'immaturity' is an *illah* for a father to have authority over his child's wealth. From this primary rule, a secondary rule is derived, allowing the father to have authority over their child's marriage contract. Here, although they share the same *illah* – immaturity - the rulings are from different categories.

In the two above examples, the second ruling being derived is of a completely different category to the category of the primary rule.

The *hukm* (ruling) of this category is that it's ruling will be invalid if the *illah* is not generic enough to incorporate both the primary and secondary rulings.

Rule: The *illah* has to be generic enough to incorporate both the *mansoos 'alaih* (where the *usul* is to be derived from), and the *ghair mansoos 'alaih* (where the secondary ruling is sought).

For example, the authority of a father is established over the wealth of an immature girl, because she is unable to perform transactions by herself. It is for this reason that the *shari'ah* has established the responsibility of her wealth on her father, so that her livelihood will not be in vain. It is also because of this lack of being able to take part in dealings, that other secondary matters are placed under the authority of her father – such as the conducting of her marriage.

In contrast, it will not be allowed for one to force a secondary ruling into a category in which it has no place. For example, the prohibition of killing cannot be used to deduce the ruling of prohibiting drugs – as they are both from unrelated categories.

Examples from *Ijtihad*/*Istinbat'*/*Ra'y*

There are certain occasions when one can come across a situation, and deduce the *illah* for its rulings through logic and analysis, and not through the *shari'ah*.

For example, if we were to see a man giving a poor person one *dirham*, his predominant thought will be that the *illah* for this is so that the neediness of the poor person can be removed, and so that the man can also receive a reward from Allah. If we were to now come across another situation, which is similar to the previous situation in trait, and our logic seems to connect the need and *illah* for both situations as being the same – it is possible for the *hukm* to also be transferred from the first situation onto the second situation.

Ghalib adh-dhann (predominance of thought) establishes rules in the absence for a ruling that is higher than it. For example, when a *musaafir* thinks that there is water nearby, he is required to search for it, and he is not allowed to do *tayammum*.

The *hukm* (ruling) of this category of *qiyas* is, that if through other analysis one is able to find out that the initial *illah* that he ascertained is not as he thought (i.e. the 'poor' person was not actually poor, or he remembered the bearings of his location), then this form of *qiyas* will be invalid.

The *hukm* of acting upon an *illah* that has been derived from *nas'* (from the Qur'an or Sunnah)

To act upon this category is similar to acting upon a ruling that is based on the testimony of a witness that has been checked for reliability.

The *hukm* of acting upon an *illah* that has been derived from *Ijma*

To act upon this category is similar to acting upon a ruling that is based on the testimony of a witness who seems to be reliable, without having been checked for reliability.

The *hukm* of acting upon an *illah* that has been derived through *Ijtihad*

To act upon this category is similar to acting upon a ruling that is based on the testimony of a witness, who is unknown, who has no sign of seeming reliable, and without having been checked for reliability.

Section Four:
Objections That Have Been Brought Against *Qiyas*

Wherever *qiyas* is exercised, there are eight different types of objections that can be raised in order to argue against it. These are:

1) *Al-Mumaana'at*
2) *Al-Qawl bi-wujoob al-illah*
3) *Al-Qalb*
4) *Al-'Aks*
5) *Fasaad al-wada'*
6) *An-Naq'd*
7) *Al-Mu'ara'daat*

Part One: *Al-Mumaana'at*

The objections from this category can be of two types:

1) That which is being defined as the *illah*, is not actually the *illah* within the ruling (*man' ul-wasf*).

2) The ruling that has been established, cannot be established from this *illah* (*man' ul-hukm*).

Examples of the first category (*man' ul-wasf*):

Imam Shafi'i is of the opinion, that the obligation of *sadaqat al-fitr* is established upon a person upon the sunset of the previous day. Therefore, if a person was to pass away after the sunset of the previous day, his family will have to pay *sadaqat al-fitr* on his behalf.

However, the Hanafis say that it is *wajib* on a person, and that this is the *illah* which also makes the *sadaqat al-fitr* into a *wajib* on behalf of all those that he is responsible for.

In a similar example, Imam Shafi'i says that when somebody possesses the value of *nisaab*, it is the *illah* for *zakaah* to now become obligatory on him, and that this obligation will not be cancelled – even if the *nisaab* is lost or perishes. For example, it is like Mr. A owing Mr. B £100, here, even if the £100 that he is to pay perishes from his pocket, he still has to pay Mr. B £100.

The Hanafis respond to this by saying that they do not agree with this *illah*, and that the act of 'paying the payment' (*adaa*) is the *illah* for the *zakaah* to be fulfilled. Therefore, when one reaches the *nisaab* level, it does not mean that it

has become obligatory yet, as he is not making the payment yet (*adaa*). When the time for payment does come, and he does not meet the level of *nisaab*, it will no longer be obligatory on him.

Examples of the second category (*man' ul-hukm*):

The Hanafis say that the *illah* for *zakaah* is the *adaa* (giving of the *zakaah*), but the Shafi'is may argue against it and ask if when the time for payment does come, and the *nisaab* perishes at that moment, does this mean that it is not obligatory on him anymore? Here, Imam Shafi'i says that *zakaah* should still be obligatory on him - in the same way as understood with the paying of a debt (even if the money to be paid perishes, the debt will still need to be paid).

Here, the Hanafis do not agree with the *hukm* that *adaa* is the *illah* that makes it *wajib* for a debt to be fulfilled, but rather, the main thing is that the debtor does not become a barrier in the creditor from taking back his money.

In another example, Imam Shafi'i says that the *masa* (wiping) of the head is a '*rukn* (pillar) of *wudhu*', and therefore it is a *sunnah* to perform it three times – as performed with the face etc. However, the Hanafis disagree and say that to perform *masa* is *fard*, and its *sunnah* is fulfilled by 'lengthening' the *fard* action by wiping over the back of the head – just as one can lengthen the recitation in one's *salaah*. This 'lengthening' cannot be done to the face etc. and therefore, its lengthening can only be carried out through repetition, and it is done three times.

Part Two: *Amman qawl bi-wujoob al-'illah*

This is where the *illah* is agreed upon, but the *hukm* that is derived from the *illah* is not agreed upon.

Examples:

Imam Zufur says that the elbow is the end-point of one's arm, and therefore it is not part of the washing of the arm during *wudhu*. The rest of the Hanafis respond by saying that the elbow *is* the end point - but of the forearm area (and therefore needs to be washed), and not the end-point of the non-washing area (bicep etc.).

In another example, Imam Shafi'i says that the fasting of Ramadan is *fard*, and therefore it has to be specified with an intention (as done with a *qadha* fast). The Hanafis respond by saying that the *fard* fast is not allowed without specification, however, it has already been specified by the *shari'ah* (as the Qur'an mentions that people who can, should fast in Ramadan). As for the *qadha* fast, there is no *qadha* timing specified by the *shari'ah*, and therefore the servant will need to specify it for himself, and it becomes a condition for him to do so.

Part Three: *Al-Qalb*

The word *qalb* literally means ‘to alter’ or ‘to change’ – as used in the word ‘heart’. This category is of two types:

1) The thing that is classed by one person as the *illah*, is classed by the other person as the *hukm*, or vice-versa.

2) The thing that one person has made the *illah* for a particular *hukm*, the other person has used the same *illah* to arrive at the opposite conclusion (an opposite *hukm*).

Examples of the first category:

Imam Shafi’i says that the *illah* for *riba* is *katheer* (a large amount – more than half a *saa’*), and the *hukm* is established for the *qaleel* (a small amount – less than half a *saa’*). In other words, the impermissibility of *riba* in a large amount is the cause of it to become *haram* in a little amount. Therefore, when it is established for the former, it will also establish it for the latter. This is similar to a hadith, where the Prophet (SAW) said, that the matter which makes alcohol *haram* in its majority, also makes the little amount *haram* as well.

However, the Hanafis respond by saying that *riba* in a *qaleel* amount is in fact the *illah* for a *katheer* amount. Therefore, if a little amount can be established as being *haram*, the ruling for the larger amount can be derived from it.

Imam Shafi’i says that the same way killing someone (the *nafs*) is *haram*, likewise it (*nafs*) is a *illah* for the killing (dismembering) of his limb to be *haram* as well. However, the Hanafis say that the fact that injuring someone’s arm is *haram*, that is the *illah* for it to not be allowed to kill them either.

Rule: When the *illah* has been made into the *hukm*, it does not remain the *illah* anymore – as something cannot be both the *illah* and the *hukm* at the same time.

Examples of the second category:

Imam Shafi’i says that a Ramadan fast being *fard* is the condition for an ‘intention’ to be necessary. However, the Hanafis say that the fast being *fard* is proof that an intention is not a condition, since it has already been specifically mentioned in the *shari’ah*.

Part Four: *Al-'Aks*

The person who has derived the *qiyas* has to explain the difference between the *asl* (primary rule) and the *fara* (secondary rule). For example, why has he derived it?

Example:

Imam Shafi'i says that since jewellery is made prepared for usage, *zakaah* is not obligatory on it. This is because we do not pay *zakaah* on 'everyday clothing', and in the same way, jewellery falls under the same category.

The Hanafis respond to this by saying that if you are using the *illah* that jewellery is 'like clothes', then *zakaah* will not be obligatory on men's jewellery either – even though Imam Shafi'i says that *zakaah* will need to be paid on men's jewellery.

In this situation, Imam Shafi'i's situation is dependant upon him describing the difference between the two.

Part Five: *Fasaad al-Wada'*

The *illah* (cause) is not appropriate for that particular *hukm*.

Examples:

Imam Shafi'i says that if a person from a non-Muslim couple converts to Islam, their *nikah* will break – in the same way as one apostating from Islam in a Muslim couple would have broken his *nikah*. Here, he has made 'accepting Islam' as the *illah* for establishing divorce.

The Hanafis object by asking as to how this can be done? How can you make a conversion to Islam – a *ni'mah* – a cause (*illah*) to derive something that is as detestable as divorce? Islam is there to protect marriage, and it will not have an effect in the breaking of the marriage. In Hanafi *fiqh*, if one becomes Muslim, Islam will be offered to the other. If s/he rejects it, this 'rejection' (*ibah*) will become the cause (*illah*) for the divorce, and not Islam.

In another example, Imam Shafi'i mentions that a person being freed and having the ability to be married is not allowed to marry a slave girl – since he is able to marry a believing woman. Here, the *illah* used is his ability to marry a free woman. The Hanafis reject this by saying that it is not a correct *illah*, as how can a free person not be allowed to marry whoever he wants?

Part Six: *An-Naq'd*

An-naqd is where the *illah* is found, but the *hukm* is not.

Example:

Imam Shafi'i says that since *wudhu* is a type of *taharah*, it makes *niyyah* a condition within it – just like with *tayammum*.

The Hanafis respond by saying that this is absurd – since you do purification (*taharah*) when washing clothing, and intention is not needed, and the clothes still achieve purity.

Part Seven: *Al-Mu'ara'daat*

Mr. A brings an *illah* to establish a particular *hukm*, but Mr. B objects by using the same *illah* against Mr. A.

Example:

Imam Shafi'i says that since *masa'* is a *rukn* in *wudhu*, it is therefore a *sunnah* to do it three times. The Hanafis respond by saying that although *masa'* is a *rukn*, it is not a *sunnah* to do it three times – in the same way that you can do *masa'* over leather socks once, even though it is also a *rukn*.

Section Five:
The *Sabab*, *Hukm*, *Illah* and *Shart'*

Rule: A *hukm* is connected with its *sabab*, and it is established with it, when it's *shart'* (condition) is found.

In *usul* terminology, the main components of a *hukm* can be explained as follows: That which is a path to something is a *sabab* (cause) for reaching the *maqsad* (aim) and destination - as without the *sabab* (i.e. a road), it would not have been possible to reach the aim (i.e. the destination). In the path, the method of transport (i.e. walking) would be the *illah* in that particular situation. As for the final destination, it will be the *sabab*.

This can be explained via the following analogy: the *hukm* is to get from London to Manchester, the *sabab* is the road that one will travel on (as well as being the name given for the destination e.g. Manchester), the *illah* is the method of transport used, and the *shart'* is the condition required for it to occur.

In another example, if one were to open a door, cage or some shackles – they are the *asbab* for its inhabitants to escape. Therefore, he will have to pay compensation - even though there was no guarantee that the inhabitants would escape.

There are various situations that may arise regarding a legal ruling, where the components are understood in light of the state of these components. Below are four examples:

1) Where a *sabab* comes with an *illah*

Rule: When both are found, and they are both at fault, the *hukm* will be attributed to the *illah* and not the *sabab* - unless it is not possible to attach it to the *illah*, only then will it will be attributed to the *sabab*.

Example one

The Hanafi *ulama* say, that if a man gave his child a knife, and the child then killed himself, the adult would not be held responsible. Here, 'giving the knife' is the *sabab*, and the 'killing' is the *illah*. In this situation, both parties are at fault, as an adult should have been wiser in his decision, whilst the child is responsible for the literal killing. However, because the *illah* is the main cause, the adult will not be held responsible. However, if the knife slipped accidentally (*illah*) and he injured himself, the fact that it was involuntary will transfer the responsibility to the *sabab* (the adult).

Example two

Mr. X placed a child on a riding saddle, allowing the child to ride on an animal, during which the animal moved – causing the child to fall and pass away. Here, the 'putting of the child' on the saddle is the *saba*b, and because the child had controlled the animal himself, the *sabab* will not be held responsible. However, if the child is too young to control the animal, then the person responsible for putting the child on the saddle (i.e. Mr. X) will be held responsible.

Example three

If somebody guided a person to somebody else's wealth, and the person stole it, the guide will not be held responsible. The reason being that the guide is the *sabab*, whilst the one who carried out the theft is the *illah*.

However, if the guide was in possession of the wealth, and he invited to its theft, they will both be held responsible – the reason being that he had betrayed his trust of ownership by inviting its theft. It is in the same way that a *muhrim* (a person who is in *ihram*) who informs another of an animal to slaughter, for which the compensation will be obligatory upon both of them. For both the keeper of property as well as the *muhrim*, from a *usul* point of view – they are the *asbab* and should not be guilty, but they have both acted wrongly by breaking a different rule respectively.

However, in both of these situations, there is no error before the *hukm* has taken place - due to the possibility that the *hukm* (i.e. the theft or slaughter) may not even take place. This is similar to a case where a person is acquitted of the need to pay compensation to his injured victim, if the victim miraculously recovers from all that had resulted from the injury, be it physical, mental etc.

2) Where the *sabab* comes in the meaning of an *illah*

Rule: Here, the *hukm* will be attributed to the *sabab*. These can usually be found in situations where the *illah* is established through the *sabab*, and the *sabab* is in the meaning of the *illah*. Therefore, although something triggered the ruling, we look at that which triggered the trigger itself (the *illah* of the *illah*).

Examples

When one is riding an animal, resulting in the animal then destroying something, the rider will be held responsible rather than the animal (i.e. the *illah* of the *illah*). This is because the rider caused the animal to cause the damage.

In another example, if a witness testifies in a case that causes someone to lose his wealth, and then its invalidity becomes apparent through knowledge that it was

a false testimony, the ruling will be revoked. Here, the *illah* (the false witness) of the *illah* (the judgement) will be guilty, and not the judge who gave the judgment.

In the above two cases, both the rider and the false witness were responsible for allowing another *illah* to occur. In these, the animal cannot be held responsible, whilst the judge himself can only base his judgment on an evidence which he did not know was false.

3) Where the *sabab* comes in place of the *illah*

Rule: Here, it is difficult to ascertain what the *illah* is for the *mukallaf*. In this situation, we will make the *sabab* as the *illah*. Therefore, the *sabab* will become responsible for having the ruling (*hukm*) attributed to it, due to the difficulty in ascertaining what the *illah* is.

Example one

Sleep is the cause for the breaking of *wudhu*, even though in reality it is the 'relaxation of the limbs' that occurs as a result of sleep (thereby making it possible for one to pass wind). Here, because it is difficult to find the *illah* (the passing of wind), the sleep itself (the *sabab*) becomes the *illah*.

Example two

Through the *khalwa as-saheeha* (the initial seclusion between a man and wife), the dowry will become obligatory. This is even though the actual *illah* – intercourse – is not known by others, and is not something that should be dwelled upon, due to its nature. Furthermore, a man could also use it as an opportunity to lie about intercourse in order to not pay the dowry. For these reasons, it is based on the seclusion period, and thus; also make *iddah* a necessity if required.

Example three

The *illah* for the *rukhsa* in *salaah* for a traveller is 'difficulty'. However, this 'difficulty' is subjective, and therefore the *sabab* of 'traveling' becomes the *illah* – irrespective of whether the traveller finds it difficult or not. This is even if it is the journey of a king – who is pampered in all of his travels. He will still perform the *rukhsa* – due to the ruling being derived from 'traveling' and not 'difficulty'.

4) A non-*sabab* is called a *sabab* metaphorically

Examples

An oath is called a *sabab*, when giving a ruling for an expiation (*kaffarah*), even though it is not a *sabab*. For example, if Mr. X were to say *"Wallahi.."*, and then not act upon his oath, it will require him to pay a *kaffarah*. Here, the 'breaking of the oath' is the *illah*, even though he would not have had to pay it had he not made the oath.

Rule: The reason why the oath is not a *sabab*, is because the *sabab* cannot be separate from the *illah*, which it is in this situation – as the oath itself negates the need for the *kaffarah*. In other words, the oath initiated it, whilst the *kaffarah* is that which ended it, and these are two different matters. In this regard, the oath is called a *sabab* in a metaphoric sense, even though it is not a *sabab* in a technical sense.

In addition to this, connecting a *hukm* with a *shart'* (condition) is also a metaphoric *sabab* – as seen in cases involving statements such as, *"If you enter this house, you are divorced"* etc. This is because the ruling takes place during the meeting of the condition, even though the *hukm* of *talaq* should have been established when the words were pronounced. Therefore, the fact that the statement is contradicting the desired outcome or ruling (*hukm*) is proof that it is not an actual *sabab* in a technical sense.

Section Six:
The Connection of The *Shar'i* Rulings With Its *Sabab*

There is a connection between the *shar'i* rulings and their *asbab*, and this connection is because the full reality of their obligations are hidden from us, thus making it necessary for there to be a sign. This allows the servant to recognise the obligation of the *hukm*.

For example, the full realities surrounding the obligation of *salaah* is not known to us, but its signs – i.e. its timings – are known to us, and therefore its *ahkams* are connected to its causes i.e. the obligation of *salaah* becomes connected to its timings. Without these timings, there is nothing that would have allowed a servant to know that a particular *salaah* is obligatory on him to perform. Therefore, the time to perform the *salaahs* is through the entering of its set times.

Without these times being met, the *hukm* of Allah's command for that particular *salaah* will not come into effect. As soon as the time has entered, the *hukm* will have been met, and this *sabab al-wujoob* will make the obligation of *salaah* necessary (its performance is called *wujoob al-adaa'*).

This is similar to if one had said to you: *"Give the money due to the shopkeeper"* (if you had taken an item from him earlier, agreeing to pay upon request at a later date). Here the *sabab al-wujoob* was the 'taking of the item', and the 'request to pay' is the *wujoob al-adaa'*.

As soon as the *sabab* is established, even those for whom the *salaah* is not *fard*, it is still applicable to them – i.e. the one who is sleeping. However, of course there is no fault for him in this regard.

What we can derive from the above is that the first moment in which the obligation starts (the entering of the time of *salaah* – the *sabab al-wujoob*), it is the first moment in which one may perform his *salaah*. The moment that it takes for him to complete this obligation is referred to as a *juz*, and there are two ways in which these *juz* are understood:

The first way

The first opinion suggests that there is only one *sabab*, and if one does not perform their *salaah* during the initial entering of the *sabab al-wujoob* (i.e. the first *juz* – in other words, the five-minute period that it takes to pray), the *sabab* will be transferred to the next five minutes, and the next, and so on, until there is the final *juz* left for the *salaah* period – when it will become a firm command. Before this final *juz*, the choice of *juz* is flexible, after it, it become *qada*.

However, if somebody were to perform their *salaah* in the final *juz*, the following will be considered:

1) The state of the servant.
2) The quality of that *juz* period.

Examples of the first category

A person was a child during the first *juz*, but becomes *baligh* (mature) at the time of the final *juz*. Similarly, a person was a non-believer during the first *juz*, but became a Muslim during the time of the final *juz*. Also, a person who was in an impure state during the first *juz*, but she became pure during the time of the final *juz*.

Similarly, it can be derived that if a sister was pure during the first *juz*, but became impure before the final *juz* and she has not prayed yet – it will not be obligatory on her. The same can be derived for one who was sane and then became insane, and that who was not a traveller and became a traveller (he can perform the *rukhsa* instead).

Examples of the second category

If somebody performed his *salaah* in the final *juz*, it will still be considered as being complete (*kaamil*). However, if he missed it, he would have to perform *qada* – but it would have to be in a *kaamil* time, and not a disallowed time.

For example, the last *juz* of *fajr* is still *kaamil*, but the rising of the sun will make it a *faasid* period. Therefore, if in the final *juz* of *fajr*, one goes over into sunrise, it will become invalid and he will need to be repeat it again during a *kaamil* time. However, if one were to complete his *salaah* in the final *juz* of *asr*, it will be accepted even though it is itself a disliked time.

The second way

The second opinion suggests that every *juz* becomes a separate *sabab*. Those who argue for this opinion argue that the first opinion negates the *sabab* that has been established in the *shari'ah* (as transferring a *sabab* from one *juz* to another would imply that the previous *juz* is no longer the *sabab*).

However, the argument against this second opinion is, that if this opinion were correct, there would be 20-30 *wujoob al-adaa's* per each *salaah*, so does this mean that one would have to pray each *salaah* 20-30 times? The reply to this however, is that the second *juz* is an exact replica of the first *juz* – similar to how there can be many witnesses in one case, or how something can be *haram* due to many *illahs* e.g. drugs are haram due to the fact that they are types of intoxicants,

they blind the *'aql*, they cause one to lose their senses, they cause one to lose control over their speech etc.

Other examples

The *sabab al-wujoob* of fasting is the coming of the month of Ramadan, and the fasting being attributed to that particular month.

The *sabab al-wujoob* for *zakaah* is the ownership of fluctuating wealth that meets the *nisaab* threshold.

The *sabab al-wujoob* of *hajj* is the *Ka'bah*, because of *hajj* being affixed to it (due to it being referred to as the *"Hajjul bayt"*), and that it must be perform once in one's lifetime. This means that if someone were to perform it whilst it is not *fard* on him (i.e. a poor person), it would still be accepted as his *fard hajj*, as the *sabab* (its obligation) would have been met. This differentiates it from a person paying *zakaah* without owning sufficient wealth, as the *sabab* (ownership of the *nisaab* threshold) is not present.

The *sabab al-wujoob* for *sadaqat ul-fitr* is the presence of people whom one is responsible for, and this can be paid immediately upon the *sabab* being met, before the day of Eid.

Regarding the *'ushr* land, if there is actual produce, this will be the *sabab* for one to pay $1/10^{th}$ from its produce. Regarding the *khiraaj* land (where a land tax is paid), it will depend on whether the land is capable of production or not, with its fertility being the *sabab* for one to pay the land tax – even if he does not plough it due to laziness.

Some scholars say that the *sabab* for *wudhu* is *salaah*, and therefore to pray requires one to have *wudhu*, and if *salaah* is not obligatory on someone, then *wudhu* is not obligatory on them either. Others, such as Imam Muhammad, say that the *sabab al-wujoob* of *wudhu* is *hadath* (minor impurity), as well as adding the caveat that *wudhu* is a prerequisite for *salaah* to be performed.

The *sabab* for *ghusl* is *haid*, *nifas*, and *janaabah* – making it obligatory during any of these three conditions.

Section Seven:
Mawaani' (Barriers to an *illah*)

The *mawaani'* are certain situations, when found, that become barriers and causes for something else to occur. According to Qadi Imam Abu Zayd, these *mawaani'* are of four types:

1) A *maani'* which prevents an *illah* from taking place.

For example, in the selling of a freed slave, a carcass, or blood, the *illah* to be able to sell them is non-existent. This is because none of these are 'owned' by the seller, thus stopping the cause (*illah*) for the *hukm* (of selling) to be allowed.

Based on this, the Hanafis derives all of the rulings regarding *ta'leeq* (conditions) – as the *ta'leeq* also prevent transactions from taking place, without the *shart'* being found. Because of this, if someone was to make an oath that he is not going to divorce his wife, and he then connects the divorce of his wife with the entering of a house, his oath will not break. This is because he has not yet divorced his wife, but placed it upon a *ta'leeq* (condition).

2) A *maani'* which prevents the completion of an *illah* (it is found partially).

For example, the *nisaab* threshold is the *illah* for *zakaah* to become obligatory on a person, but it is only complete if it is over the duration of a whole year. Therefore, if the wealth of a person perished during the year, this is an example of the *illah* (the *nisaab*) being found partially, but not for the complete required duration (a whole year).

Another example for this is when one of two witnesses refuses to give witness in a case which requires the testimony of two witnesses. Thus, half of the *illah* for the judgment will be missing.

A third example is the rejection of half of a transaction (either the offer or the acceptance), in order for it to be an *illah* for the transaction to go ahead.

3) A *maani'* which prevents the initiation of a *hukm*.

For example, a condition is placed upon an agreed *bay'* – *khiyar ash-shart'* - such as a three-day return guarantee. Here, the *illah* of *bay'* (offer and acceptance) has been found; yet the beginning of the *hukm* (ownership) is not effective immediately.

In another example, the condition of a *ma'dhoor* (someone who is unable to remain in the state of purity long enough to perform *salaah*) is that their *wudhu*

is still intact until the entering of the time of the next *salaah*. Here, the *illah* is found for the breaking of their *wudhu*, but in their condition, the *illah* for them to perform fresh *wudhu* is only upon the entry of the time of the next *salaah*.

4) A *maani'* which prevents the continuation of a *hukm*.

For example, the ruling regarding *khiyar al-buloogh* – where a person was to get their immature child or grandchild married, it is valid even after the maturity of the child. However, regarding the conducting of a marriage by a *wali* such as an uncle, the matured child will have a right to cancel their marriage. In the latter, the beginning of the marriage has begun, but the longevity of it is pending upon the decision of the now matured child.

Similarly, in a *khiyar itq*, if a person married their slave to someone, if they are then freed – they have a right to cancel it afterwards.

Another example is that of a *khiyar ar-ru'ya* – where a transaction is done for an item which has not yet been seen. Here, the *illah* for the *bay'* has been done (offer and acceptance), but the buyer still has the opportunity to cancel the *bay'* if it is not to the standard to which he had thought.

In a further example, if an injury is to fully heal before the victim can be paid his compensation, then the person responsible will not have to be pay it. This is because the *illah* (the injury) for the compensation was initially found, but it seemingly miraculously disappeared in every way – both physically and mentally.

Note: The above four categories of the *mawaani'* are according to the scholars who are of the opinion, that it is not necessary that where an *illah* is found, that a *hukm* must also be found. As for those who are not of the opinion of *takhsees al-illah* – in other words, they say that an *illah* must result in a *hukm* - a *maani'* is only of three types:

1) The *maani'* that prevents the beginning of an *illah*.
2) The *maani'* that prevents the completion of an *illah*.
3) That *maani'* that prevents the continuation of a *hukm*.

As we can see, the second group of scholars deny the original third type from the first list - where a *hukm* is being prevented from being initiated, since they say that a *hukm must* occur with an *illah*. As for those examples given in the first list under the third category, this second group of scholars say that these examples are actually examples of the second category – that they are examples of the prevention of the completion of an *illah*.

Section Eight:
The *Fard*, *Wajib*, *Sunnah* and *Nafl*

The word *fard* linguistically infers 'to stipulate'. It is called a *fard* because the obligations of the *shari'ah* stipulate it to not have any possibility of either increase or deficiency. In other words, when something is a *fard* within the *shari'ah*, that is the final decree for it, and it will remain as a *qat'i daleel* (definitive proof). Therefore, its *hukm* is to not only act upon it, but to also believe in its obligation.

Regarding the *wajib*, one opinion is that it is from the word *suqoot* - something that 'falls' on a servant without his own choice or will. Another opinion is that it is called a *wajib* because it is a doubtful matter in between a *fard* and a *nafl*. Its *hukm* is that it is a *fard* in relation to acting upon it, and therefore cannot be left out. However, despite the obligation in acting upon it, we do not say that it is an obligation for one to *have* to believe in its obligation. This is because the *wajib* is established through something that is slightly doubtful. For example, when a rule is inferred from an interpretation of a Qur'anic ayah, although these ayahs are *qat'i* (definitive), there may still be an *ikhtilaf* on how certain terms are understood e.g. *quru* (it can either mean '*haid*' or '*tuhoor*'). Another example of a *wajib* is that which has been established through evidences derived from authentic *khabar wahid* ahadith.

The *sunnah* is a word for the preferred way (*tariqah*) in the *deen*, irrespective of whether it is from the Prophet (SAW) or from the Sahaabah (RA). Its *hukm* is that a person should try to implement it (in order to receive *sawaab*), whilst the one who leaves it out is worthy of criticism, unless he leaves it out for a reason.

As for the *nafl*, it is something extra, which is why the spoils of war are also called '*nafl*' as a result of *jihad* in the path of Allah. This is due to the booty being extra beauty that is found on top of the beauty found in the path of *jihad*. The *hukm* of a *nafl* is that it is an optional extra act, and therefore, one will not be punished for not doing it. Often, the word *ta'tawwu'* is used as a synonym for *nafl*.

Section Nine:
The *'Adheema* and The *Rukhsa*

In a linguistic sense, a *'adheema* is a strong, firm intention in one's heart to do a particular action. Because of this reason, the firm intention of intercourse is considered to be 'returning' when it comes to *dhihar*. Therefore, he will have to pay the *kaffarah* for *dhihar* as soon as he makes this intention. It is for this same reason, that if somebody were to make a firm verbal intention (e.g. *"I firmly intend to – 'a'thimu' -"*), it is the same as if he had taken an oath.

In the *shari'ah*, the *'adheema* refers to those *ahkam* which are necessary for us to observe from the beginning, as their causes (*asbab*) have been emphasised therein. This is because it is a *fard* for us to obey the one who is commanding – Allah, He is our Lord, and we are His servants. This initial command that we are told to do is therefore called the *'adheema* regardless of what is being commanded – just like the categories of *fard* and *wajib* mentioned earlier.

As for the *rukhsa*, it is a term to denote something that is easy and straight-forward. Technically, it allows a command to be diverted from difficulty to ease, due to the cause of an excuse found on the part of the one who has been commanded.

As for the categories of *rukhsa*, they are different, and are based on the *asbab* - the excuses that a person has brought forward. Therefore, the *rukhsa* will differ for each matter. In conclusion, there are two main types of *rukhsa*:

1) *Rukhsa al-fi'l*: The permissibility to do an action, even though its impermissibility remains.

For example, uttering words of *kufr* when threatened with death – as long as it is with the tongue, even though the heart is content with Allah. Also, to forgive someone when you have the right to avenge a crime that they had committed.

Its *hukm* is that if somebody is patient until he is killed, he will be rewarded for refraining from doing something *haram* out of respect for the prohibition of the lawmaker (Allah). In this case, he will, inshaAllah, be treated like a *shaheed*.

2) *Taghreer sifat al-fi'l*: Changing the nature of the *fi'l*, causing that which is unlawful to become lawful.

For example, one is compelled into eating pork and drinking alcohol, due to being on the verge of death through starvation. In this situation, due to it being a life and death situation, the *haram* would become *halal*. If one were to then refrain from it until he died – it will be considered a sin, due to him refusing to do something that is *mubah* (permissible). He will be treated as though he has killed himself, as that *mubah* action had became an obligation for him to do at that point.

Section Ten:
Rulings Given Without *Daleels*

This is a section where examples will be given of Imams deriving rules without any evidence, thus demonstrating some of their shortcomings. These examples will be provided from two major shortcomings:

Type one: It is incorrect to say that if there is no *illah*, there is no *hukm*.

Examples:

1) Imam Shafi'i says that vomit does not break one's *wudhu*, as it does not come out of the private parts. However, this is an example of a shortcoming according to the Hanafis, as there could be other reasons for it to break one's *wudhu* (such as it being impure), so there is no need to specify it to only one cause.

2) Imam Shafi'i says that a slave is not freed if he is owned by his brother, because there is no lineage between the two. He understands the hadith as a son being allowed to free a father and vice versa, and therefore restricting it to *wiladat* relations only. However, Imam Abu Hanifah says that if one were to become the owner of any of his relatives, they would immediately become free.

3) Imam Muhammad was asked if *qisas* was necessary on the participation of a child in a murder, along with an adult helper. Here, if both were mature, they would both be killed. He replied that the child is not responsible, and that the mature person who helped him will also be let off. The objection was then made that if this was the case, what if a mature person helped a father to kill his son? Here, normally the father would be forgiven for such an action, and therefore it should seem that the helper should also be let off. However, the *illah* of the first example does not appear in the second example. The idea being that you cannot simplify and specify something to one *illah* only. This is the same as saying Mr. X did not die as he did not fall off the roof, as there are many ways for one to die.

Rule: If the *hukm* is such that the *illah* is restricted to that *hukm* only, then it is fine for them to be dependant upon each other, and the rulings would be derived accordingly. So, where the specified *illah* is not found, the *hukm* cannot be derived. For example:

1) If a slave-girl is snatched, and she later gives birth to a child – compensation will be paid for the slave-girl, but not for the child. This is because the snatching was done on the slave-girl, and not the child, and it is 'snatching' that is the *illah* for compensation.

2) If a witness testified that so and so killed a particular person, because of which the accused was killed, and the witness later retracted the statement (as it was a lie) – the witness will not be killed. This is because he was not the one who killed, and he will have to pay blood money instead. In this situation, killing is the *illah* for one to also be killed.

Type two: It is incorrect to derive rulings by assuming a situation to remain in a particular state (*istishaab al-haal*).

This is because the existence of something does not necessitate that it will remain like that forever.

Rule: The known status (*istishaab al-haal*) can only be used to protect one's self, but it cannot be used to establish an *ildham* (a new ruling).

Examples:

1) Regarding the *majhool an-nasab* (one with an unknown lineage), if one were to claim that he is a slave (as the prevailing situation suggests a possibility), and then the accused does a crime – he will not have to give the same compensation as a free person (but that of a slave, since that claim was made).

If one gave the ruling that the compensation of a free person is necessary upon him, he will be establishing something about him that is not known. Therefore, he will be attempting to change the known reality (*istishaab al-haal*), in order to establish something new, and this is not allowed. Instead, we will use the *istishaab al-haal* (that he is possibly a slave) as a proof to defend him.

2) The Hanafis say that if blood exceeds longer than ten days during *haid*, and the lady has a known habit (e.g. eight days), the extra two days (above the known habit) will be considered as *istihadha*. Here, if we had decided that her habit has changed, we will be acting upon something without evidence, as the extra two days can be of two different types of bleeding: either *istihadha* or a prolonged period.

3) If a young woman begins her *buloogh* with *istihadha*, her *haid* will be considered as being ten days. This is because that which is less than ten days can be considered as either *haid* or *istihadha*. We cannot give a figure less than ten days, since it can be either of those two – and we do not know which. If we were to go ahead and assume a number that is less than ten days, it will be acting upon something without evidence. As for saying something that is more than ten days, it is not possible, as a hadith mentions that anything above ten days is considered as *istihadha*.

The last known state (*istishaab al-haal*) of something *can* be used as a proof for protection of one's self.

Example:

Regarding a missing person, the ruling for him is that *istishaab al-haal* can be used to derive his last known status - that he is alive. This evidence can then be used for defensive measures, and no one will be allowed to inherit from his property whilst he is missing. However, this evidence cannot now be used to establish new rulings, such as not allowing the missing person to inherit from the passing of one of his relatives.

An objection against the Hanafis

In this section, the Hanafis have criticised many situations where rulings have been derived without sufficient evidence. Here, others have in turn criticised the Hanafis for also being guilty of the same shortfall:

Imam Abu Hanifah says that there is no *khums* (one-fifth) to be given to the treasury for amber (a type of perfume), unlike other treasures that are found. The reason being that there is no hadith regarding the matter. However, the objection here is that Imam Abu Hanifah is accused of deriving a ruling without any evidence, just like the Hanafis have accused others in this section.

Here, the Hanafis respond by saying that Imam Abu Hanifah did not say this for the sake of merely saying it. Instead, he said it to mean that he is not aware of any hadith that suggests that *khums* needs to be paid for amber.

Because of this issue, Imam Muhammad asked Imam Abu Hanifah as to why he had said that there is no *khums* taken for amber, to which he replied that it is like fish. He then asked why a fisherman does not have to pay *khums*, to which he replied that fish is like water, and therefore there is no *khums* for fish as there is no *khums* for water. Thus, Imam Abu Hanifah has given his proof in order to show that he has not derived a ruling without any proof.